

***United States Court of Appeals
for the Second Circuit***



APPENDIX

765
77-1493

To be argued by Steven H. Gifs, Esq.

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

PHILIP LANDWEHR,
Defendant-Appellant.

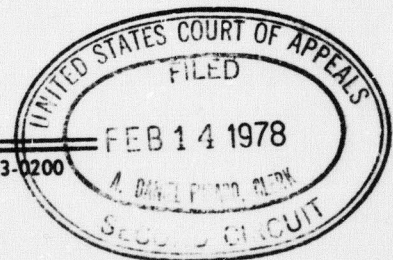
ON APPEAL FROM JUDGMENT OF CONVICTION AND SENTENCE
FOR VIOLATION OF 18 U.S.C. § 152 (BANKRUPTCY FRAUD)
IN THE SOUTHERN DISTRICT OF NEW YORK
SAT BELOW: HON. ROBERT J. WARD, U.S.D.J.

**APPENDIX ON BEHALF OF
DEFENDANT-APPELLANT**

STEVEN H. GIFIS,
Attorney for Defendant-Appellant,

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PAGINATION AS IN ORIGINAL COPY

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Dal

OFFENSE PO	U.S. MAGISTRATE Assigned	U.S.	Case Filed Mo, Day	77	0196	01
OFFENSE MO	0208 1	0859	03 17			
1st ANGR Mis	Distp./Sentence	vs. LANDWEHR, PHILIP	No. of Def's	*04		
FELONY Fel	District Office	(LAST, FIRST, MIDDLE)	JUVENILE			

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	U.S. MAG. CASE NO.
18:371 - 4993	Consp. to commit bankruptcy fraud	1	77 0196 01
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ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	Information	Trial Set For
Summons Served	Indict Waived	4-7-77	Vor Dire
Last Appearance	In Charging District	4-7-77	Trial Began
		8-16-77	Trial Ended

Disposition of Charges	SENTENCE
8-16-77	11-2-77
☒ Convicted	☐ On All Charges
☐ Acquitted	☐ On Lesser Offense(s)
☐ Dismissed	☐ WOP: ☐ WP
	☐ On Government's Motion

MAGISTRATE	
Search Warrant Issued Summons Issued Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint)	DATE INITIAL NO INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT Tape Number
OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW	

U.S. Attorney or Asst. **T. Barry Kingham** 791-1056

ATTORNEYS Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Joseph Paglino
 88 N.E. 79th St.
 Miami, Fla 33138
 Tel: 305-758-8017

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c)
3-17-77		Filed Indictment & Ordered sealed. B/W Ordered... Metzner, J. B/W Issued.	
3-28-77		Indictment Ordered unsealed..... Metzner, J.	
4-1-77		Filed the following Magistrate papers: Docket entry sheet, Mag's. Warrant of Arrest, Disposition sheet, Notice of Appearance, Appearance Bond & Copy of Indictment.	
4-7-77		Def't. (atty. Joseph Paglino present) pleads not guilty. Bail \$50,000 PRB secured by \$5,000 cash or surety continued. Case assigned to Ward, J. for all purposes..... Lasker, J.	
4-26-77		Filed Def't's MOTION TO DISMISS indictment and memorandum of law in support thereof.	
4-26-77		Filed Def't's MOTION DISCLOSURE of reports arising from electronic surveillance, mail watch or cover or other surveillance.	
4-26-77		Filed Def't's MOTION for additional time in which to file motions Memorandum of Law in support thereof.	

IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUSIONS	
DATE	DOCUMENT NO.	DATE	RECEIPT NUMBER	C.D. NUMBER	
4-26-77	Filed Deft's Motion for Discovery and Inspection and Memorandum of Law in support thereof.				
4-26-77	Filed MOTION FOR BILL OF PARTICULARS.				
4-26-77	Filed MOTION FOR RELIEF from prejudicial joinder and for election by Government MEMORANDUM OF LAW in support thereof.				
4-27-77	Filed Deft's MOTION FOR DISCLOSURE exculpatory materials, statements, Etc.				
4-29-77	Filed JOINDER IN MOTIONS - re- motions filed on behalf of the co-deft Michael Daspin.				
5-3-77	Filed Deft's AFFIDAVIT in reply to deft Daspin's pretrial motions.				
5-3-77	Filed Deft's REPLY AFFIDAVIT of T. BARRY KINGHAM to deft Landwehr's pretrial motions.				
5-5-77	Filed Deft's Motion to enlarge Bail Limits etc, No ret date.				
5-5-77	Filed Deft's motion for disclosure of G.J. Testimony given by G. Santorella nad other. No ret date supplied.				
5-6-77	Filed. MEMO-ENDORSED on motion to enlarge bail limits. Motion granted on consent. WARD, J. m/n				
5-6-77	Filed./ORDER ext bail limits of the deft to include all of the continental limits of the Unites States. WARD. J.				
5-13-77	Filed. Govt's Bill of Particulars in response to deft's motion				
5-13-77	Filed. Govt's Bill of Particulars in response to deft's Daspin's motion.				
5-13-77	Filed. GOVT'S Affidavit in opposition to deft's motion for disclosure of grand jury testimony given by Gus Santorella and others.				
6-1-77	Filed transcript of record of proceedings, dated April 7, 1977				
6-21-77	Filed Govts. affdvt. and notice of motion for an order granting the Govt. discovery of documents, tangible objects and reports of examinations and tests which the defts. intend to introduce as evidence in chief at trial, pursuant to Rule 16(b) (1)(A) & (B), Fed. R. of Crim. P. Ret.				
6-21-77	Filed Govt's memorandum of law in support of its motion for disclosure of evidence by the defts.				
8-1-77	Filed MEMO ENDORSED on Govt's motion of 6-21-77. Motion Granted. The defts are directed to disclose their documents, tangible objects and reports of scientific tests no later than 8-1-77., two weeks prior to the start of the trial. Ward, J. m/n				
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-27-77. Motion withdrawn without prejudice. WARD, J. m/n.				
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77, to dismiss the indictment. Motion disposed of in part and denied in part. Ward, J. m/n.				
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77 for relief from prejudicial joinder and for election by govt. Motion denied. Ward, J. m/n				
FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

Cont'd on page 3.

DATE	PROCEEDINGS
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77 for discovery and inspection. Motion withdrawn without prejudice. WARD, J. m/n.
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77 for additional time in which to file motions. Motion denied without prejudice. WARD, J. m/n.
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77 for a bill of particulars. Motion withdrawn in reliance upon Govt's Bill of Particulars filed on 5-13-77. WARD, J. m/n.
8-1-77	Filed MEMO ENDORSED on deft's motion filed 4-26-77 for disclosure of reports arising from electronic surveillance, mail watch or cover or other surveillance. Motion denied, without prejudice to renewal based on further factual allegations. WARD, J. m/n.
8-1-77	Filed MEMO ENDORSED on deft's motion filed 5-5-77 for disclosure of Grand Jury Testimony Given by Gus Santorella and others. Motion denied as premature. WARD, J. m/n.
8-16-77	Deft w/a/p pleads GUILTY to Count 30. P.S.I. ordered. Deft to be sentenced on 11-3-77, at 9:30 A.M. in Room 601. Bail Cont'd. WARD, J.
8-16-77	Filed AGREEMENT between the deft and the USA.
8-31-77	Filed transcript of record of proceedings, dated 7-29-77
11-21-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the Atty Gen for impr for a period of THREE (3) YEARS on count 30. Counts 1-29 and 31-33 are dismissed on motion of deft's counsel and with the consent of the govt. Deft is remanded. WARD, J. (all copies issued)

1-1185

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

PHILIP LANDWEHR,
MICHAEL DASPIN,
GERALD GRIFFIN, and
LU WOOD,

Defendants.

INDICTMENT

77 Cr. 196

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this indictment the defendants PHILIP LANDWEHR and MICHAEL DASPIN were engaged in business at offices located at 400 Park Avenue, New York, New York.
2. In or about May 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN, using their controlled corporation Intercontinental Systems of America, Inc., purchased and acquired control of four trucking companies whose principal offices were located in upstate New York: Johnson Transportation, Inc., Gene Adams Refrigerated Trucking Service, Inc., Lewis G. Johnson, Inc. and Evans Express Company, Inc.
3. On or about June 8, 1973, through their controlled corporation Granite Holding Company, Inc., and with checks drawn on a bank account of Gene Adams Refrigerated Trucking Service, Inc., the defendants PHILIP LANDWEHR and MICHAEL DASPIN purchased and acquired control of another upstate trucking company, Beverage Transport, Inc.
4. Following the acquisitions referred to in paragraphs 2 and 3, above, the defendants PHILIP LANDWEHR and MICHAEL DASPIN and their nominees were elected as officers of the said trucking companies. The defendants PHILIP LANDWEHR

and MICHAEL DASPIN then managed the affairs of the trucking companies from their offices at 400 Park Avenue, New York, N.Y., and consolidated the companies' New York metropolitan area operations at a terminal located at 111 Marshal Street, Hoboken, New Jersey.

5. On July 9, 1973, in the Bankruptcy Court of the United States District Court for the Southern District of New York ("Bankruptcy Court"), Beverage Transport, Inc. filed a Petition in Proceedings under Chapter XI of the Bankruptcy Act ("Chapter XI petition") which proceedings would permit the continued operation of the company without immediate payment of debts accrued prior to July 9, 1973.

6. In or about July, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN hired defendant LU WOOD as comptroller of Evans Express Company, Inc., and thereafter installed the defendant LU WOOD as president of said company.

7. On October 24, 1973, Johnson Transportation, Inc., Gene Adams Refrigerated Trucking Service, Inc., and Lewis G. Johnson, Inc., filed Chapter XI petitions in the Bankruptcy Court.

8. In or about December, 1973 the defendants PHILIP LANDWEHR and MICHAEL DASPIN hired defendant GERALD GRIFFIN as an accountant and comptroller for business ventures controlled by the defendants LANDWEHR and DASPIN.

9. On April 30, 1974, Evans Express Company, Inc., filed a Chapter XI petition in the Bankruptcy Court.

10. Each and every allegation contained in this Introduction is hereby repeated, realleged and incorporated by reference in Counts One through Thirty-three of this indictment, as though fully set forth therein.

COUNT ONE

The Grand Jury further charges:

OBJECT OF THE CONSPIRACY

11. From in or about May, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, the defendants

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PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD, and others to the Grand Jury known and unknown, combined, conspired, confederated and agreed together and with each other to violate Section 152 of Title 18, United States Code in order to defraud the Bankruptcy Court and the creditors of the companies referred to in paragraph 2, above.

12. It was further a part of said conspiracy that the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD, unlawfully, wilfully, knowingly and fraudulently would make and cause to be made false oaths and accounts in and in relation to bankruptcy proceedings and, after the filing of bankruptcy proceedings would knowingly and fraudulently make false entries in documents affecting and relating to the property and affairs of a bankrupt.

MEANS OF THE CONSPIRACY

13. Among the means whereby the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN, LU WOOD and their co-conspirators would and did accomplish the objects set forth in paragraph 11 of this indictment were the following:

(a) PHILIP LANDWEHR and MICHAEL DASPIN, the defendants, acting through Intercontinental Systems of America, Inc., would purchase and obtain control of three companies engaged in interstate commerce in the trucking industry: Johnson Transportation, Inc., Gene Adams Refrigerated Trucking Service, Inc., and Lewis G. Johnson, Inc., and Evans Express Company, Inc. The purpose of the acquisitions was to convert the companies' assets to the use of the defendants LANDWEHR and DASPIN and to seek the protection of the Bankruptcy Court while the said defendants looted the companies;

(b) Within six months of the acquisition of Johnson Transportation, Inc., Gene Adams Refrigerated Trucking Service, Inc., and Lewis G. Johnson, Inc., the defendants PHILIP LANDWEHR and MICHAEL DASPIN would cause those companies

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to file in the Bankruptcy Court Chapter XI Petitions which contained false information as to the companies' assets and liabilities and the identity of the companies' creditors, so that the Court would be misled as to the companies' true financial condition and so that persons controlled by or friendly with the defendants would be elected to the Creditors' Committee;

(c) Within a year of the acquisition of Evans Express Company, Inc., the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD caused said trucking company to file in the Bankruptcy Court a Chapter XI Petition which contained false information as to the company's assets and liabilities and the identity of the company's creditors, so that the Court would be misled as to the company's true financial condition and so that persons controlled by or friendly with the defendants, would be elected to the Creditors' Committee;

(d) In order to use the protective shield of the Bankruptcy Court while they defrauded creditors and depleted the assets of the trucking companies for their own gain, the defendants PHILIP LANDWEHR, MICHAEL DASPIN and GERALD GRIFFIN would make and cause to be made false statements under oath which were filed with the Bankruptcy Court, which statements indicated that the trucking companies' operations were profitable when in fact, as the said defendants well knew, the operating statements did not reflect the companies' true operating expenses.

OVERT ACTS

14. In furtherance of the conspiracy, and to effect the objects set forth in paragraph 11 of this Indictment, the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) Prior to October 24, 1973 the defendants PHILIP LANDWEHR and MICHAEL DASPIN prepared a list of the ten largest creditors of Johnson Transportation, Inc., which list was false as to the identity of and amount due to certain creditors;

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(b) Prior to October 24, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN prepared a list of the ten largest creditors of Gene Adams Refrigerated Trucking Service, Inc., which list was false as to the identity of and amount due to certain creditors;

(c) Prior to October 24, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN prepared a list of the ten largest creditors of Lewis G. Johnson, Inc., which list was false as to the identity and amount due to certain creditors;

(d) On October 24, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN filed and caused to be filed in the Bankruptcy Court a false Chapter XI petition for Johnson Transportation, Inc.;

(e) On October 24, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN filed and caused to be filed in the Bankruptcy Court a false Chapter 11 petition for Gene Adams Refrigerated Trucking Service, Inc.;

(f) On October 24, 1973, the defendants PHILIP LANDWEHR and MICHAEL DASPIN filed and caused to be filed in the Bankruptcy Court a false Chapter XI petition for Lewis G. Johnson, Inc.;

(g) On or about March 6, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through January 26, 1974;

(h) On or about March 6, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through January 26, 1974;

(i) On or about April 2, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through March 2, 1974;

(j) On or about April 2, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc. for the period October 25, 1973 through March 2, 1974;

(k) On or about May 7, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through March 30, 1974;

(l) On or about May 7, 1974, the defendants GERALD GRIFFIN and MICHAEL DASPIN prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc. for the period October 25, 1973 through March 30, 1974;

(m) On or about June 17, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through April 26, 1974;

(n) On or about July 22, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through May 31, 1974;

(o) On or about July 23, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through May 31, 1974;

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(p) On or about September 4, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through July 26, 1974;

(q) On or about September 4, 1974, the defendants GERALD GRIFFIN and MICHAEL DASPIN prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of the Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through July 26, 1974;

(r) On or about October 15, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through August 31, 1974;

(s) On or about October 15, 1974, the defendants GERALD GRIFFIN and MICHAEL DASPIN prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through August 31, 1974;

(t) On or about November 20, 1974, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through September 30, 1974;

(u) On or about February 27, 1975, the defendants GERALD GRIFFIN and MICHAEL DASPIN prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through September 28, 1974;

(v) On or about February 27, 1975, the defendants GERALD GRIFFIN and PHILIP LANDWEHR prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Gene Adams Refrigerated Trucking Service, Inc., for the period October 25, 1973 through December 28, 1974;

(w) On or about February 27, 1975, the defendants GERALD GRIFFIN and MICHAEL DASPIN prepared, caused to be prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Lewis G. Johnson, Inc., for the period October 25, 1973 through December 28, 1974;

(x) Prior to April 30, 1974, the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD prepared a list of the ten highest creditors of Evans Express Company, Inc., which list was false as to the identity of and amount due to certain creditors;

(y) On April 30, 1974, the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD filed and caused to be filed in the United States District Court for the Southern District of New York, a false Chapter XI petition for Evans Express Company, Inc.;

(z) On or about July 11, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending May 31, 1974;

(aa) On or about July 24, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending June 30, 1974;

(bb) On or about October 7, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending July 31, 1974;

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(cc) On or about October 7, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending August 31, 1974;

(dd) On or about November 8, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending September 30, 1974;

(ee) On or about December 27, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending October 31, 1974;

(ff) On or about December 27, 1974, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending November 30, 1974;

(gg) On or about March 25, 1975, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending February 28, 1975;

(hh) On or about May 7, 1975, the defendant LU WOOD prepared and filed with the Bankruptcy Court a false Statement of Operating Profit for Evans Express Company, Inc., for the period ending March 31, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH FOUR

The Grand Jury further charges:

15. On or about October 24, 1973, in the Southern District of New York, the defendants PHILIP LANDWEHR and MICHAEL DASPIN, unlawfully, wilfully, knowingly and fraudulently did make and cause to be made false oaths and accounts in, and in relation to bankruptcy proceedings by making, swearing to, subscribing and filing and by causing to be made, sworn to, subscribed and filed, in the Bankruptcy Court of the United States District Court for the Southern District of New York under Chapter XI Petitions, for the corporations listed herein in Counts Two through Four:

<u>COUNT</u>	<u>CORPORATION</u>
2	Johnson Transportation, Inc.
3	Gene Adams Refrigerated Trucking Service, Inc.
4	Lewis G. Johnson, Inc.

(Title 18, United States Code, Sections 152 and 2.)

COUNTS FIVE THROUGH TWENTY-ONE

The Grand Jury further charges:

16. On or about the dates set forth herein in Counts Five through Twenty-one, in the Southern District of New York, the defendants PHILIP LANDWEHR, MICHAEL DASPIN and GERALD GRIFFIN, unlawfully, wilfully, knowingly and fraudulently did make and cause to be made false oaths and accounts in and in relation to bankruptcy proceedings by making, swearing to, subscribing and filing, and by causing to be made, sworn to, subscribed and filed, in the United States District Court for the Southern District of New York, false Statements of Operating Profit for the corporate debtors-in-possession set forth below in Counts Five through Twenty-one:

<u>COUNT</u>	<u>DATE</u>	<u>CORPORATION</u>
5	March 6, 1974	Gene Adams Refrigerated Trucking Service, Inc.
6	March 6, 1974	Lewis G. Johnson, Inc.
7	April 2, 1974	Gene Adams Refrigerated Trucking Service, Inc.
8	April 2, 1974	Lewis G. Johnson, Inc.
9	May 7, 1974	Gene Adams Refrigerated Trucking Service, Inc.
10	May 7, 1974	Lewis G. Johnson, Inc.
11	June 17, 1974	Gene Adams Refrigerated Trucking Service, Inc.

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<u>COUNT</u>	<u>DATE</u>	<u>CORPORATION</u>
12	July 22, 1974	Gene Adams Refrigerated Trucking Service, Inc.
13	July 22, 1974	Lewis G. Johnson, Inc.
14	September 4, 1974	Gene Adams Refrigerated Trucking Service, Inc.
15	September 4, 1974	Lewis G. Johnson, Inc.
16	October 15, 1974	Gene Adams Refrigerated Trucking Service, Inc.
17	October 15, 1974	Lewis G. Johnson, Inc.
18	November 20, 1974	Gene Adams Refrigerated Trucking Service, Inc.
19	November 20, 1974	Lewis G. Johnson, Inc.
20	February 27, 1975	Gene Adams Refrigerated Trucking Service, Inc.
21	February 27, 1975	Lewis G. Johnson, Inc.

(Title 18, United States Code, Sections 152 and 2.)

COUNT TWENTY-TWO

The Grand Jury further charges:

17. On or about April 30, 1974, in the Southern District of New York, the defendants PHILIP LANDWEHR, MICHAEL DASPIN, GERALD GRIFFIN and LU WOOD unlawfully, wilfully, knowingly and fraudulently did make and cause to be made false oaths and accounts in, and in relation to bankruptcy proceedings by making, swearing to, subscribing and filing and by causing to be made, sworn to, subscribed and filed, in the Bankruptcy Court of the United States District Court for the Southern District of New York, a false Petition in Proceedings Under Chapter XI of the Bankruptcy Act for Evans Express Company, Inc.

(Title 18, United States Code, Sections 152 and 2.)

COUNTS TWENTY-THREE THROUGH THIRTY-ONE

The Grand Jury further charges:

18. On or about the dates set forth below in Counts Twenty-three through Thirty-one, in the Southern District of New York, the defendants PHILIP LANDWEHR, MICHAEL

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DASPIN, GERALD GRIFFIN, and LU WOOD unlawfully, wilfully, knowingly and fraudulently did make and cause to be made false oaths and accounts in, and in relation to bankruptcy proceedings by making, swearing to, subscribing and filing and by causing to be made, sworn to, subscribed and filed, in the Bankruptcy Court of the United States District Court for the Southern District of New York, false Statements of Operating Profit for Evans Express Company, Inc. for the accounting periods indicated below:

<u>COUNT</u>	<u>DATE</u>	<u>FOR PERIOD ENDING</u>
23	July 11, 1974	May 31, 1974
24	July 24, 1974	June 30, 1974
25	October 7, 1974	July 31, 1974
26	October 7, 1974	August 31, 1974
27	November 8, 1974	September 30, 1974
28	December 27, 1974	October 31, 1974
29	December 27, 1974	November 30, 1974
30	March 25, 1975	February 28, 1975
31	May 8, 1975	March 31, 1975

(Title 18, United States Code, Sections 152 and 2.)

COUNT THIRTY-TWO

The Grand Jury further charges:

19. On January 23, 1974, in the Southern District of New York, the defendant PHILIP LANDWEHR, having duly taken an oath as a witness that he would testify truthfully before a Court of the United States, to wit, the Bankruptcy Court of the United States District Court for the Southern District of New York, unlawfully, wilfully and knowingly and contrary to said oath did make the following false material declaration:

Q. Mr. Landwehr, is there any connection between any of the three debtors and Beverage Transport?

A. No.

(Title 18, United States Code, Section 1623.)

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COUNT THIRTY-THREE

The Grand Jury further charges:

In and around March and April, 1975, in the Southern District of New York, PHILIP LANDWEHR and MICHAEL DASPIN, the defendants, unlawfully, wilfully, knowingly and corruptly endeavored to obstruct and impede the due and proper administration of the law under which a proceeding was pending before a department and agency of the United States, to wit, an investigation being conducted by the Interstate Commerce Commission, into the circumstances surrounding the control and management of certain trucking companies engaged in interstate commerce: Beverage Transport, Inc., Gene Adams Refrigerated Trucking Service, Inc., Lewis G. Johnson, Inc., and Evans Express Company, Inc. by directing subpoenaed witnesses not to appear at said proceeding.

(Title 18, United States Code, Sections 1505 and 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

K:mi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA :

-v- :

PHILIP LANDWEHR, et al., :

77 Cr. 196 (RJW)

Defendants. :

----- -x

AGREEMENT BETWEEN PHILIP LANDWEHR
AND THE UNITED STATES OF AMERICA

I.

The United States of America will accept a plea of guilty to one count of the Indictment in the above-captioned case charging a violation of Section 152 of Title 18, United States Code, from defendant PHILIP LANDWEHR.

II.

The United States of America will, at the time of sentencing in the above-captioned matter, move to dismiss all remaining counts of the Indictment in the case of United States v. Landwehr, et al., 77 Cr. 196 against the defendant PHILIP LANDWEHR.

III.

The United States of America will, at the time of sentencing in the above-captioned matter, move to dismiss all counts of the Indictment in the case of United States v. Daspin, et al., Cr. No. 77-238 against the defendant PHILIP LANDWEHR, now pending in the United States District Court for the District of New Jersey.

IV.

The United States will not use or permit to be used any information disclosed by the defendant PHILIP

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LANDWEHR during interrogation by attorneys or agents for the United States against the defendant PHILIP LANDWEHR on all charges now pending or which could be brought in any jurisdiction, except as provided in Paragraph VII(e) of this Agreement.

V.

The United States of America will apply to the Department of Justice for authority to seek a formal grant of immunity pursuant to Title 18, United States Code, Section 6002 in the event that the defendant PHILIP LANDWEHR is required to provide testimony that tends to incriminate him before a federal grand jury and/or as a witness for the United States in a criminal trial except in United States v. Daspin, et al., Criminal No. 77-238 in the District of New Jersey and United States v. Landwehr, et al., 77 Cr. 196 (RJW) in the Southern District of New York, inasmuch as these cases are covered by paragraphs II and III, above.

VI.

The United States of America, prior to the time of sentencing, will advise the Court and the defendant of the full nature, extent and value of the cooperation given by defendant PHILIP LANDWEHR to the United States of America.

VII.

The representations made by the United States of America are conditioned upon the following:

- (a) Defendat PHILIP LANDWEHR
will cooperate forthwith with
agents and attorneys for the
United States of America in the
Southern District of New York
and District of New Jersey by
providing complete, candid and
truthful information.
- (b) Defendant PHILIP LANDWEHR, if
called as a witness before a
federal grand jury or in a trial,
will testify under oath completely,
candidly and truthfully.
- (c) Defendant PHILIP LANDWEHR will enter
a plea of guilty to one count of the
Indictment in the above-captioned
case which charges a violation of
Section 152 of Title 18, United States
Code, punishable by imprisonment of
up to 5 years and a maximum fine of
\$5,000.
- (d) Defendant PHILIP LANDWEHR agrees and
fully understands that in the event
defendant PHILIP LANDWEHR fails to
keep any provision of this Agreement,
defendant PHILIP LANDWEHR will be
prosecuted on all charges now pending
or which could be brought in any
jurisdiction.

- 4 -

(e) Defendant PHILIP LANDWEHR, should he fail to keep any provision of this Agreement, hereby waives his right against self-incrimination and fully understands and agrees that any sworn or unsworn statement or any evidence given by defendant PHILIP LANDWEHR pursuant to this Agreement may be used by the United States of America against defendant PHILIP LANDWEHR without objection in any and all cases now pending or which could be brought against him.

Dated: New York, New York

August 16, 1977.

(S) _____
PHILIP LANDWEHR
Defendant

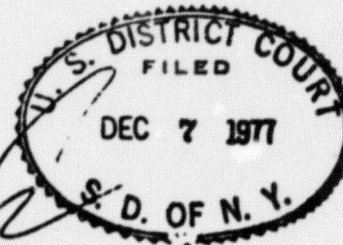
(S) _____
T. BARRY KINGHAM
Assistant United States Attorney
Southern District of New York

(S) _____
STEPHEN GIFIS, ESQ.,
Attorney for Defendant
Philip Landwehr

(S) _____
ARTHUR S. GOLDSTEIN,
Assistant United States Attorney
District of New Jersey

(S) _____
JOSEPH PAGLINO, ESQ.,
Attorney for Defendant
Philip Landwehr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

vs.

77 Cr. 196

PHILIP LANDWEHR, et al.,

Defendants.

New York, New York
August 16, 1977

Before:

HON. ROBERT J. WARD,

District Judge

Appearances:

ROBERT B. FISKE, JR. Esq.

United States Attorney for the
Southern District of New York

BY: BARRY KINGHAM, Esq.

Assistant United States Attorney, of Counsel
RICHARD D. WEINBERG, Esq.

Assistant United States Attorney, of Counsel
ARTHUR GOLDSTEIN, Esq.

Assistant United States Attorney,
District of New Jersey

JOSEPH S. PAGLINO, Esq., and

STEVEN GIFIS, Esq., of counsel

Attorney for Defendant Landwehr

JACK COHEN, Esq.

Attorney for Defendant Daspin

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THE CLERK: Case called.

MR. KINGHAM: Government is ready.

THE COURT: Good morning, Mr. Kingham.

MR. KINGHAM: Good morning. I believe the defendant Mr. Landwehr is ready. He is present in court. I might also note that present in court and with me at counsel table is Arthur Goldstein, Assistant United States Attorney in the District of New Jersey where, as your Honor knows, there is a pending indictment against Mr. Landwehr and other co-defendants. With the Court's permission I would like to have Mr. Goldstein join me at counsel table for this purpose.

THE COURT: Permission is granted.

MR. KINGHAM: Thank you, your Honor. I understand that Mr. Landwehr is present in court today with the intention to withdraw his plea of not guilty to one count of indictment and to enter a plea of guilty to it; and I might note that this plea is entered pursuant to an agreement which we have reduced to writing, and I would like to hand it up to the Court, so that the Court will be advised of the contents of the agreement. I would ask that the Court retain that, which is the original agreement, in the Court's file on this matter; and I should note that this agreement was originally reached, I guess, last Tuesday

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2 when we notified the Court that there was the possibility
3 of disposition here, and we finalized the agreement last
4 night and this morning with the cooperation of Mr. Landwehr
5 and his attorneys.

6 THE COURT: Very well. Let me hear from Mr.
7 Paglino. Good morning. How are you?

8 MR. PAGLINO: Very well, sir.

9 THE COURT: I have already admitted you pro hac
10 vice, so we'll not delay proceedings on that. I gather
11 that Mr. Landwehr wishes to withdraw his plea, and I
12 will hear you on the matter.

13 MR. PAGLINO: Yes, your Honor. At this time
14 co-counsel Steven Gifis, and myself agree that Mr. Landwehr
15 has entered into an agreement to plead as set forth in
16 the document handed to your Honor today to count thirty of
17 the indictment issued in this case, your Honor.

18 THE COURT: Very well. Let me turn to that
19 count.

20 MR. PAGLINO: That appears on page 12 of the
21 indictment, your Honor.

22 THE COURT: Yes. And the predicate language
23 appears beginning with paragraph 18, I see.

24 MR. PAGLINO: Yes, your Honor.

25 THE COURT: All right.

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MR. PAGLINO: Paragraph 1, Title 18, Section 152

THE COURT: All right. I will make note of that in the first instance. count thirty.

I note from the agreement that has been handed up to me that the plea will be to a violation of Section 152 Title 18, United States Code. Do both counsel agree on that? It would seem that you have Section 152 and Section 2 set forth under count 30.

MR. GIFIS: Your Honor, as you will see from the allocution this morning. the liability of Mr. Landwehr under 152 is accessorial. so it's necessary to have the Section 2 violation. He did not file the particular statements that are alleged, but he did, as you will see, direct the filing of same and assist.

THE COURT: I see. Now with reference to one other matter so I am clear, it would appear to the Court that the maximum penalty for violation of this is five years and/or a \$5,000 fine. Am I correct on the penalty limits?

MR. PAGLINO: That is my understanding, your Honor.

MR. KINGHAM: That is correct, your Honor.

THE COURT: Very well. Let me have a moment to review the agreement, which is of several pages, and then

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2 I will proceed, as is my practice, to an allocution.

3 (Pause)

4 THE COURT: I have now had an opportunity to
5 read the agreement which is, as I noted, four pages in
6 length. It's dated today, and it bears a number of signatures.
7 I will reserve with reference to Mr. Landwehr because I
8 will be allocuting direct to him, but I would inquire
9 of the Messrs. Kingham, Goldstein, Paglino and Gifis if
10 those are your signatures which appear on the document.

11 MR. PAGLINO: Yes, your Honor.

12 MR. GOLDSTEIN: Yes, they are, your Honor.

13 MR. KINGHAM: Yes, your Honor.

14 MR. GIFIS: Yes, your Honor.

15 THE COURT: Very well. At this time with the
16 leave of counsel, I will make inquiry of Mr. Landwehr.

17 Mr. Landwehr, it has been indicated to me by
18 your attorneys that you desire to withdraw your plea of
19 not guilty previously entered, and to enter a plea of
20 guilty to the charges contained in count 30 of this
21 indictment. I will ask you a series of questions prior
22 to determining whether or not to accept this plea. I
23 will advise you at this time, as I do all the defendants
24 who plead before me, that your answers will be taken down
25 by the court reporter, and in the event your answers to

any of my questions are untrue, you may be subject to prosecution for making false statements to a judicial officer. You understand that?

DEFENDANT LANDWEHR: Yes, sir.

THE COURT: What is your full name?

DEFENDANT LANDWEHR: Philip Landwehr.

THE COURT: Where do you reside?

DEFENDANT LANDWEHR: Miami, Florida.

THE COURT: Could you give us an address?

DEFENDANT LANDWEHR: 1198 Venetian Way, Miami, Florida 33134.

THE COURT: How old are you, sir?

DEFENDANT: LANDWEHR: 45.

THE COURT: How far did you go in school, the extent of your education?

DEFENDANT LANDWEHR: B.B.A. degree.

THE COURT: Very well. Mr. Landwehr, you have been indicted, as you know, by a Federal Grand Jury. Do you understand that you are entitled to a trial, whether it be by a jury or by a judge alone, on charges in this indictment if you wish it?

DEFENDANT LANDWEHR: Yes.

THE COURT: You understand that at that trial, you would be entitled to be represented by counsel; you

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1 would be entitled to confront and cross-examine all of
2 the witnesses against you; you would be entitled to the
3 presumption of innocence, and the government would have
4 the burden of proving your guilt on each and every element
5 of the crimes charged beyond a reasonable doubt? Do you
6 understand all of that?
7

8 DEFENDANT LANDWEHR: Yes, I do.

9 THE COURT: Do you understand further that you
10 would not be obliged to put in any defense if you chose
11 not to, nor would you be obliged to take the witness
12 stand and testify, and in the event you did not testify,
13 you would be entitled to an instruction, which I would give
14 the jury, that they should draw no inference whatsoever
15 from your not having testified? Do you understand all
16 of that?

17 DEFENDANT: LANDWEHR: Yes, sir.

18 THE COURT: Do you understand further that
19 in order to be convicted on any count of the indictment,
20 the jury, if it were a jury case, would have to be unanimous
21 in concluding that each element of each count on which they
22 convicted you had been proved by the government beyond a
23 reasonable doubt? Do you understand that?

24 DEFENDANT: LANDWEHR: Yes.

25 THE COURT: And the same would be true in a bench

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2 trial, that is a trial before a judge, myself. I would
3 have to be convinced that the government had proved each
4 and every element of each count before I convicted you on
5 any count, and I would have to be convinced beyond a
6 reasonable doubt. Do you understand that?

7 DEFENDANT LANDWEHR: Yes.

8 THE COURT: Do you understand further that if
9 you were convicted you would have the right to an appeal,
10 and to have any conviction reviewed as of right in the
11 United States Court of Appeals for the Second Circuit,
12 and you could present a petition for review to the United
13 States Supreme Court? Whether or not they granted your
14 petition or not, of course would be discretionary. Do
15 you understand that you would have all of those rights if
16 you were to adhere to your plea of not guilty?

17 DEFENDANT LANDWEHR: Yes.

18 THE COURT: You understand that if I accept
19 your offer to plead guilty here this morning, you will
20 not have a trial, either before a jury or a judge, and
21 you would give up your rights to appeal from a guilty
22 verdict?

23 DEFENDANT LANDWEHR: Yes.

24 THE COURT: Do you understand that if I
25 accept your plea to count 30 of this indictment, I may send

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2 you to jail?

3 DEFENDANT LANDWEHR: Yes.

4 THE COURT: You understand that if I see fit,
5 I may sentence you to jail for a maximum term of five years,
6 and in addition I might impose a maximum fine of \$5,000.
7 Do you understand that?

8 DEFENDANT LANDWEHR: Yes.

9 THE COURT: Have you conferred with your
10 attorneys, Mr. Paglino and Mr. Gifis, about pleading guilty?

11 DEFENDANT LANDWEHR: Yes.

12 THE COURT: Have you determined to enter a
13 plea of guilty this morning to count 30 after having
14 conferred with your attorneys, and upon your own well
15 considered judgment?

16 DEFENDANT LANDWEHR: Yes.

17 THE COURT: Have any threats of any sort been
18 made to you to induce you to plead guilty?

19 DEFENDANT LANDWEHR: No.

20 THE COURT: It is my understanding with regard
21 to promises, that an agreement has been entered into
22 between yourself and your attorneys, and the government,
23 represented by Mr. Kingham, Assistant United States Attorney
24 for the Southern District of New York, and Mr. Goldstein,
25 Assistant United States Attorney for the District of New Jersey,

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and that that written agreement, which consists of four pages, and which consists of seven paragraphs and several sub-paragraphs, contains the full and complete understanding and agreement which has been made between you and the United States of America. Is that correct?

DEFENDANT LANDWEHR: Yes.

THE COURT: At this time, I will ask the clerk to docket the agreement, and I will incorporate the agreement with the minutes of these proceedings.

Do you plead guilty of your own free will?

DEFENDANT LANDWEHR: Yes.

THE COURT: I ask you the next series of questions just to know that you are aware of what you are doing this morning, and not because I feel that you are or aren't what is about to follow. This is a customary question I ask. Are you a user of narcotics?

DEFENDANT LANDWEHR: No.

THE COURT: Are you a user of alcohol?

DEFENDANT LANDWEHR: No.

THE COURT: The questions are asked so that I can determine if you are truly sober and aware of what you are doing this morning. You are nodding your head, and I will ask you if you understand what you are doing here this morning.

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2 DEFENDANT LANDWEHR: Yes.

3 THE COURT: Count 30 of the indictment to which
4 you have offered to plead guilty reads as follows: "The
5 Grand Jury further charges:

6 "18.: On or about the date set forth in count 30,
7 in the Southern District of New York, the defendants Philip
8 Landwehr, Michael Daspin, Gerald Griffin, and Lu Wood,
9 unlawfully, willfully, knowingly, and fraudulently did make
10 and cause to be made false oaths and accounts in and in
11 relation to bankruptcy proceedings by making, swearing to,
12 subscribing, and filing, and by causing to be made, sworn
13 to, subscribed, and filed in the Bankruptcy Court of the
14 United States District Court for the Southern District
15 of New York false statements of operating profit for
16 Evans Express Co., Inc. for the accounting period
17 indicated below:

18 Count 30. Date, March 25, 1975 for period
19 ending February 28, 1975."

20 This is charged as a violation of Title 18 United
21 States Code, Sections 152 and 2. I close my reference to
22 the indictment.

23 It is my understanding from the statement made
24 previously by your counsel that what you did was to aid
25 and abet or assist another in performing this act. I would

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2 like you to tell me in your own words what you did.

3 DEFENDANT LANDWEHR: Well I told Lu Wood to
4 be sure there was a profit every month. that -- well the
5 most that -- the period ending February 28, 1975, should
6 be profitable.

7 THE COURT: In other words, you told him to be
8 sure that the period -- I am just looking at the indictment
9 -- it would appear to be a quarter, the months of December,
10 January, and February of 1974-1975 showed a profit. Have
11 I interpreted correctly?

12 DEFENDANT LANDWEHR: Yes.

13 THE COURT: In other words I note the prior
14 count terminated with November 30th; so I would just ask
15 you if I am clear. Did you tell Mr. Wood that you wanted
16 a quarterly statement which he was to file for the months
17 of December 1974 and January and February 1975 to show a
18 profit?

19 DEFENDANT LANDWEHR: Excuse me one moment.

20 MR. PAGLINO: I think it's monthly in this
21 particular instance, your Honor, but it's immaterial to
22 the gist of the matter anyway.

23 THE COURT: Very well. I had just looked here
24 and it struck me the other way, but since I am unaware of
25 it, let's go back and see if I can clarify my own mind on

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2 this.

3 MR. KINGHAM: If I may, your Honor, I may be of
4 some help here. You will notice a gap in the dates under
5 counts 23 through 31, as the Court pointed out, between the
6 period ending November 30th and the period ending February 28th.
7 The reason for that is the government's proof at trial
8 would show that there were certain statements that were
9 either not filed or misfiled and therefore are not
10 charged in the indictment.

11 THE COURT: But these were for monthly periods?

12 MR. KINGHAM: With respect to this company they
13 were on a monthly basis, and I believe that Mr. Landwehr's
14 allocution should relate to the monthly -- actually, it's
15 the month of February 1975.

16 THE COURT: Very well. Let me concentrate on
17 that. I am glad you all cleared it up. The court did not
18 have the background that you have, and therefore, of
19 course, I was working from the thought that hit me when
20 I saw the prior statement.

21 As I understand it, Mr. Wood was the accountant
22 for Evans Express Company, Inc; is that correct?

23 DEFENDANT LANDWEHR: Yes.

24 THE COURT: And as I understand it, it was his
25 duty to prepare statements of operating profits for that

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company. is that correct?

DEFENDANT LANDWEHR: Yes.

THE COURT: And as I understand it, in connection with his preparation of a statement of operating profit for Evans Express Company for the month of February, 1975, you had a conversation with him and told him that it was necessary that the statement for that month show a profit. Is that correct?

DEFENDANT LANDWEHR: Yes.

THE COURT: And at the time when you spoke to him, did you know whether or not the company had shown a profit for the month of February 1975?

DEFENDANT LANDWEHR: No.

THE COURT: You didn't know what the true state of affairs was, but you told him, no matter what the true state of affairs was, "You be sure that it comes out showing a profit"? Is that the sum and substance of it?

DEFENDANT LANDWEHR: Yes.

THE COURT: And it was your intention, as I understand it, that the statement which Mr. Wood would prepare and file would show an operating profit no matter what the true operating results were for that month, is that correct?

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DEFENDANT LANDWEHR: Yes.

THE COURT: And you knew, did you not, that the statement was in fact supposed to reflect the true operating results, whether they be good or bad. Is that correct?

DEFENDANT LANDWEHR: Yes.

THE COURT: And therefore, as I see it, you said no matter what the true results were, that statement is to show a profit, period?

DEFENDANT LANDWEHR: Yes.

THE COURT: Mr. Kingham, are there any additional questions you would want the Court to put to Mr. Landwehr at this time?

MR. KINGHAM: No, your Honor.

THE COURT: Very well. I gather the conversation that you had with Mr. Wood took place on or about March 25, 1975. Is that correct, Mr. Landwehr?

DEFENDANT LANDWEHR: Yes.

THE COURT: And where were you when the conversation took place? Were you here in this district?

DEFENDANT LANDWEHR: Yes.

THE COURT: And as I understand it, the statements were to be filed here in the Bankruptcy Court of the United States District Court for the Southern District

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2 of New York, is that correct?

3 DEFENDANT LANDWEHR: Yes.

4 THE COURT: Very well. I had previously asked
5 Mr. Kingham if there were any additional questions he would
6 wish me to put to Mr. Landwehr. Now I will ask Mr. Paglino
7 and Mr. Gifis if they have any additional questions
8 they wish me to put to Mr. Landwehr at this time.

9 MR. PAGLINO: I have none.

10 MR. GIFIS: None, your Honor.

11 THE COURT: I would ask defense counsel if they
12 know of any reason why Mr. Landwehr should not plead guilty
13 to count 30?

14 MR. GIFIS: No, your Honor.

15 MR. PAGLINO: No, your Honor.

16 THE COURT: The Court accepts the defendant's offer
17 to plead guilty to count 30, finding that the plea is
18 knowledgeable, voluntary, and has a basis in fact that
19 contains all the elements of the crime. The plea is
20 therefore accepted. I believe that a pre-sentence report
21 would be helpful in this case, and I direct its preparation.
22 I note already from the agreement which will be docketed that
23 this is an occasion with regard to cooperation. I would
24 make one further comment, Mr. Landwehr. I say this to all
25 the defendants who plead guilty before me I see you for

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1 a relatively few minutes. The probation officer will
2 review matters with you and ultimately will prepare and
3 submit to me a pre-sentence report. I have found from my
4 experience that if a defendant is frank and candid with
5 the probation officer, no matter what turns up, it usually
6 works out better. If the defendant feels that he can
7 not be frank and candid, it's always better in my judgment
8 that he say nothing, because if the probation officer gets
9 the idea that he is being misled, then his report reflects
10 it, and it can only work adversely. So my own suggestion
11 to all defendants, not only to you but to all who plead
12 before me, is to be frank and candid with the probation
13 department.

14
15 A pre-sentence report will be prepared, and
16 it is my practice and the practice, I guess, of all judges
17 now in this district to permit your attorneys to review
18 the pre-sentence report prior to the date of sentence,
19 so they may point out to me any omissions or erroneous
20 information which might be contained within the report.

21 In the event defense counsel review the report
22 and I strongly urge that they do so, then the United States
23 Attorney may do likewise.

24 At this time I would set a date for sentencing.
25 I'd ask Mr. Kingham and defense counsel if they have

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2 suggestions on the matter, and I would listen to whatever
3 you have in the way of suggestions regarding sentence.

4 MR. KINGHAM: Your Honor, I believe there
5 is a requirement to set a sentencing date within 45 days --

6 THE COURT: Yes.

7 MR. KINGHAM: -- From the date of conviction, and
8 the government would request, perhaps with the consent of
9 defense counsel, that that be extended somewhat. There
10 is a trial, you know, set for September 8th in the District
11 of New Jersey which, barring any adjournments, in any
12 event should take some period of time, and Mr. Landwehr
13 may be involved indefinitely in that trial; and we would
14 request then that the Court set an extension date sometime
15 during the month of October with that in mind.

16 THE COURT: If you wish to speak briefly with
17 defense counsel, if you can come up with a mutually
18 agreeable time, I can then make inquiry of Mr. Landwehr
19 if he is prepared to waive the 45-day requirement of the
20 Speedy Trial Act.

21 MR. PAGLINO: What date in October did the
22 government wish?

23 Your Honor, rather than take the Court's time,
24 can we leave it to be set within the Court's discretion
25 within the 45-days with leave for the government to --

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2 THE COURT: No, I would sooner set it, and
3 then I would be willing to adjourn it. I have no problem
4 with an adjournment if all agree on an adjourned date. I
5 have done that before. I can do it again.

6 MR. KINGHAM: May we have a moment, your Honor?

7 THE COURT: Certainly.

8 (Pause)

9 MR. KINGHAM: Your Honor, we've conferred with
10 defense counsel and with Mr. Landwehr, and we would request
11 a date during the first week of November subject to the
12 defendant's waiver of the 45-day requirement, and perhaps
13 November 3rd or 4th, toward the end of that week might
14 be convenient.

15 THE COURT: There is probably an election day
16 early in November.

17 MR. KINGHAM: That is why I mentioned the end
18 of the week.

19 THE COURT: I would be agreeable, if you all
20 would, to Thursday, November 3rd.

21 MR. KINGHAM: That is fine with the government.

22 THE COURT: Now, the time. I prefer the
23 morning if it can be arranged by counsel, and if not, we'll
24 set it for the early afternoon.

25 MR. GIFIS: Your Honor, if it was on Thursday it

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2 would have to be in the morning because of my teaching
3 schedule.

4 THE COURT: If we could set it down for 9:30,
5 I would prefer it, because I like to deal with matters
6 such as sentences prior to proceeding to the trial calendar.

7 MR. GIFIS: I would like the record to reflect,
8 your Honor, that, since we have agreed to the sentence
9 date beyond the 45 days provided, that that day is a
10 fixed date not subject to further adjournment except
11 by the defendant's consent or because of court problems,
12 but we want a definite date here that he can look to
13 in terms of receiving a sentence and be done with this
14 matter.

15 MR. KINGHAM: We've no problem with that, your
16 Honor.

17 THE COURT: Very well. In the ordinary course,
18 Mr. Landwehr, I would set the sentencing down for a
19 period somewhere within the next six weeks with the outside
20 date being 45 days from now, which is the outside date
21 requirement of the Speedy Trial Act. It has been indicated
22 to me that for a number of other reasons, both the government
23 and the defense would prefer a firm sentencing date early
24 in November. I am prepared to set the case down for
25 sentencing on Thursday, November 3, 1977 at 9:30 a.m., in

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2 courtroom 35 here in the courthouse: but before doing so,
3 I will turn to you and state to you that you are entitled
4 to sentencing within 45 days of today. You understand that?

5 DEFENDANT LANDWEHR: Yes.

6 THE COURT: Do you join with your counsel in
7 agreeing to a deferral of your sentencing beyond the 45-day
8 period knowing that you have the right to be sentenced
9 within 45 days, but do you join with your counsel in agree-
10 ing that this case should be set down for sentencing on
11 November 3rd?

12 DEFENDANT LANDWEHR: Yes.

13 THE COURT: Very well. The Court will set the
14 case down for sentencing on Thursday, November 3, 1977, at
15 9:30 a.m. in courtroom 35. I will change that courtroom.
16 Courtroom 601, which is on this floor. I hadn't thought
17 much beyond October, I suppose, and that's why I missed
18 it. Would you please note that, gentlemen? The place
19 of sentence will be courtroom 601.

20 What is Mr. Landwehr's present status, Mr.
21 Kingham?

22 MR. KINGHAM: Mr. Landwehr is released on bail,
23 your Honor, with limits being travel within the continental
24 United States. We've no objection to continuing the bail
25 status and limits till the time of sentence.

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1 THE COURT: Is that agreeable?

2 MR. PAGLINO: Yes, your Honor.

3 THE COURT: Very well, Bail is continued,
4 both as to amount and as to the bail limits. Mr. Landwehr,
5 you will continue on bail, pending sentence. You may
6 travel within the continental limits of the United States.
7 I suggest only that you keep in close touch with your
8 attorneys during that time. I must as a matter of course
9 advise you that if you fail or refuse to appear for
10 sentencing on the date and time and place indicated, that
11 is, courtroom 601, on Thursday, November 3rd, 1977, at 9:30
12 a.m., you would subject yourself to further and additional
13 penalties or for what is commonly called bail jumping,
14 which is something I am sure you neither want nor need.
15 Is there anything further, gentlemen?

16 MR. KINGHAM: There is not with respect to Mr.
17 Landwehr, your Honor. There is one brief matter with
18 respect to Mr. Daspin, but I think that Mr. Landwehr
19 and his attorneys could be excused. They have to go
20 to probation. Mr. Daspin's attorney is present in court
21 and you can take that matter up. It will just take
22 a minute.

23 THE COURT: Very well, since we have completed
24 the matter as regards Mr. Landwehr, Mr. Landwehr, you and
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your counsel are excused. It is necessary at this time that you proceed to the probation department. If you will do that, you can make your initial appointments and then you will proceed with the probation process.

MR. PAGLINO: With the leave of the Court we'll wait until after Mr. Daspin's business. I would like to talk with Jack Cohen about something, my former colleague in this case.

THE COURT: Well, that is agreeable, and therefore, if you would make yourself comfortable with your client, then we'll hear from Mr. Cohen.

MR. PAGLINO: Are we off the record now?

THE COURT: Yes.

(Discussion off the record.)

THE COURT: All right. Now, if you are all ready, we'll go back on the record. Mr. Kingham, you indicated that there was a matter you wish to take up with me which related to Mr. Daspin. I note that Mr. Cohen is here. As I said to his co-defendant's counsel a few moments ago, he had been before me previously, and I admitted him pro hac vice so we can proceed with dispatch.

MR. KINGHAM: Your Honor, Mr. Daspin is also present in court, and Mr. Daspin last Thursday, which was August 11, 1977, entered a plea of guilty to one count

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of the indictment which was pending against him, Mr. Landwehr, and some other people, over in the District of New Jersey, before Judge Stern. Part of the agreement entered into with Mr. Daspin is virtually identical to that with Mr. Landwehr. That is, as to Mr. Daspin, that the government will seek a dismissal or a nolle of the New York indictment at the time of his sentencing on the New Jersey indictment. Mr. Daspin is the sole remaining unconvicted defendant in the case which is presently before your Honor: and we would request that under Title 18 Section 3161(h)(8)(a), that the Court make an exception and a finding that under the Speedy Trial Act the interests of justice are best served by an adjournment of Mr. Daspin's trial and a continuance of the matter until he is sentenced in the District of New Jersey. That is presently scheduled for October 6, 1977, of course, subject to adjournments or to whatever changes Judge Stern may make in that matter. so we would request that Mr. Daspin's matter be continued until such time as he is sentenced by Judge Stern in the District of New Jersey.

THE COURT: Mr. Cohen?

MR. COHEN: May I say on behalf of the defendant, your Honor, that with complete awareness of those provisions

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of the Speedy Trial Act which would otherwise dictate a trial date, that both Mr. Daspin and I have no objection to such a handling of the matter.

THE COURT: Very well. I think it might be best if I addressed myself very briefly to Mr. Daspin.

Mr. Daspin, you are named as a defendant in this indictment which was filed, if my memory serves, back on March 17, 1977. In the ordinary course, you would be required to be brought to trial by September 17th. In fact, your trial had been scheduled to begin yesterday. It would appear now that you will not be proceeding to trial here, and that at some future date after you are sentenced in New Jersey the charges against you here will be dismissed. But you do have the right to a trial under the law within six-months of March 17th. I would ask you if you join in the application which has been made and if you consent to a continuance of your case pending disposition of the case in New Jersey?

DEFENDANT DASPIN: Yes, your Honor.

THE COURT: The Court, having been appraised of the circumstances of the joint application for an adjournment in this case, finds under the provisions of Title 18 United States Code Section 3161(h)(8)(a) that the ends of justice would be served by adjourning the

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case as it relates to Mr. Daspin to await the outcome of the pending case in the District of New Jersey.

It would appear to the Court that if the case in New Jersey is disposed of, that will mean that this case, which I understood would have taken some three weeks to try, will not have to be tried. I suggest that the interests of justice for the defendant and the public are all served by the Court's granting the application. Accordingly, the application is granted.

MR. KINGHAM: Thank you, your Honor.

THE COURT: Is there anything further?

MR. KINGHAM: Nothing further.

THE COURT: Thank you, gentlemen.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA :

5 vs. : 77 Cr. 196

6 PHILIP LANDWEHR, :

7 Defendant. :

8 -----x

9 New York, New York
10 November 21, 1977 - 2:10 p.m.

11 B e f o r e:

12 HON. ROBERT J. WARD,

13 District Judge

14 Appearances:

15 ROBERT B. FISKE, JR., Esq.
United States Attorney for the
Southern District of New York
16 BY: T. BARRY KINGHAM, Esq.
Assistant United States Attorney

17 -and-

18 KENNETH N. LAPTOOK, Esq.
19 Assistant United States Attorney
Southern District of New Jersey

20 JOSEPH PAGLINO, Esq.
21 STEVEN H. GIFIS, Esq.
22 Attorneys for Defendant

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3 THE COURT: Good afternoon, everyone.

4 Mr. Guranich, would you call the matter which had
5 been adjourned and set down for 2:00 p.m.6 THE CLERK: For sentencing, United States of
7 America vs. Philip Landwehr. Is the government ready?

8 MR. KINGHAM: The government is ready.

9 I think I had indicated to the Court that Mr.
10 Arthur Goldstein from the District of New Jersey would
11 be present. Unfortunately Mr. Goldstein is en route from
12 that district's office in Camden but Kenneth N. Lantook,
13 who is also an Assistant in that district and familiar
14 with the case, is also present in court with me.

15 THE COURT: Do you wish to await Mr. Goldstein?

16 MR. KINGHAM: I don't think that would be necessary
17 because he didn't know how long he would be delayed in getting
18 here.

19 THE CLERK: Is the defendant ready?

20 MR. PAGLINO: The defendant is ready, your Honor.

21 THE COURT: Very well. The Court notes that
22 the defendant Philip Landwehr and his attorneys, Joseph
23 Paglino and Steven H. Gifis, are present.24 In as much as a substantial period of time has
25 elapsed since Mr. Landwehr entered his plea, I would ask
him at this time if he wishes to change his plea.

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2 THE DEFENDANT: No, your Honor.

3 THE COURT: I would ask defense counsel if there
4 is any reason why sentence should not be imposed at
5 this time.

6 MR. PAGLINO: Your Honor, the answer to that
7 would depend whether the Court has had an opportunity
8 to review the comments which I made to the pre-sentence
9 investigation. If the Court has had an opportunity to
10 review these things, then I see no reason to delay
11 sentencing in this case.

12 THE COURT: I have before me three pages containing
13 comments which you made, if that's what you have reference
14 to.

15 MR. PAGLINO: I apologize for the typing, your
16 Honor. I did it myself and one of the typewriters there,
17 but that is it.

18 THE COURT: I have had an opportunity to review your
19 comments, and of course I will permit you to comment
20 further orally. So I gather from what you said, there is
21 no legal reason why sentence should not be imposed at
22 this time. Is that correct?

23 MR. PAGLINO: No, your Honor.

24 THE COURT: Mr. Landwehr, I would inquire of you if
25 there is any reason you know of why sentence should not be

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2 imposed at this time.

3 THE DEFENDANT: No, your Honor.

4 THE COURT: You may be seated.

5 At this time I will ask defense counsel if there
6 is anything he wishes to say in his client's behalf or whether
7 wishes to present any information to the Court in mitigation
8 of punishment. Then after I have heard from counsel I will
9 make a similar inquiry of Mr. Landwehr and finally will
10 make an inquiry of the United States Attorney.

11 Mr. Paglino.

12 MR. PAGLINO: Your Honor, I do have a witness to
13 present briefly, a doctor Michael Gilbert, who is a
14 psychiatrist and a member of the Academy of Psychosomatic
15 Medicine. This is in view of the problem that the
16 Court is aware of. Mr. Landwehr's son is a severe
17 hemophiliac.

18 THE COURT: I am aware of that.

19 MR. PAGLINO: I would, with the Court's indulgence,
20 very briefly give the Court the benefit of Dr. Gilbert's
21 findings vis-a-vis the effect that imprisonment may have on
22 Mr. Landwehr's son. This has been one of the reasons
23 leading to the plea in this case, as the Court will recall,
24 and with the Court's indulgence I would very briefly like
25 to put Dr. Gilbert on and be done with him.

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THE COURT: Do you have any objection, Mr. Kingham?

MR. KINGHAM: It is unusual, your Honor, but I would like to hear Dr. Gilbert's testimony under oath.

THE COURT: Very well.

M I C H A E L M G I L B E R T, called as a witness by the defendant Landwehr, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PAGLINO:

Q Doctor, would you tell the Court briefly your background and qualifications in the field of psychiatry and psychosomatic medicine?

A I received a Bachelor of Science from the University of Michigan. After attending the University of Michigan, Ursula College, Essex County Junior College and the University of New Hampshire.

I then did graduate work at the University of Michigan and received a Master of Science degree in psychology. I then continued on and eventually received a Ph.D, or Doctor of Philosophy degree in psychology. I was a research psychologist for several years, mostly with the United States Government in various capacities. I then left that field and entered medical school and

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1 after four years received my M.D. degree. I then took a
2 years rotating internship at St. Elizabeth's Hospital
3 in Washington, D. C., a government hospital, and then followed
4 this with a three year residency training program in the
5 Veterans Administration Hospital in Los Angeles. Subsequently
6 I was certified by the American Board of Psychiatry
7 and Neurology as a specialist in that field.

8 Q Do you belong to any organization dealing with
9 psychosomatic medicine?

10 A Well, I am a member of many research organizations,
11 as well as psychiatric organizations, more particularly
12 the Society for Biological Psychology and a member of the
13 American Academy for Psychosomatic Medicine.

14 Q Have you published any papers in the course of your
15 career?

16 A Yes, I have.

17 Q Approximately how many?

18 A Twenty-five papers in various medical journals,
19 and just recently I gave a paper before the American
20 Academy of Psychosomatic Medicine in California back last
21 week.

22 MR. PAGLINO: Your Honor, I would tender Doctor
23 Gilbert as an expert witness in the fields of psychiatry
24 and psychosomatic medicine.
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MR. KINGHAM: No objection.

THE COURT: Very well, I will take his opinion and consider it.

Q Are you familiar with the fact of the hemophilia of Mark Landwehr, the son of the defendant in this case?

A Yes, I am.

Q Did you cause to have certain tests performed on Mark Landwehr so that you could evaluate the results of these tests?

A Yes, I did.

Q Could you tell the Court the results of your tests and any opinion which you may have as to the effect of the incarceration of the defendant upon Mark Landwehr, his son?

THE COURT: First, before we do that, is it your opinion that Mark Landwehr is a Factor VIII(deficient hemophiliac)?

THE WITNESS: Yes.

THE COURT: Is it your understanding that he is treated three times weekly with seven hundred units of a serum known as Factor VIII?

THE WITNESS: Yes, sir, it contains a Factor VIII.

Q Would you answer the previous question.

A Well, I think I would have to preface it by

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pointing out that it is recognized that there are certain psychosomatic factors in hemophilia as there are in the course of many other illnesses and that the tendency to bleed is affected by emotional states.

I brought along for the information of the Court, for example, an article published by the National Hemophilia Foundation where they put in large letters, and I am reading from it, "Certain strong emotional states may intensify bleeding or increase susceptibility to bleeding."

MR. KINGHAM: Your Honor, could we have that marked, please?

THE COURT: Yes. If you are reading from something I will ask that it be marked for identification.

(Defendant's Exhibit A, B and C, marked for identification.)

A In addition to the factors affecting the bleeding tendency, there are also behavioral factors involved in varying emotional states. That is the child who is unhappy, depressed or guilt-ridden may be much more accident prone than the emotionally happy child and then as the depression worsens certainly hemophiliac children will actually inflict injuries upon themselves, either as an unconscious way of acting out or because of their own self-destructive tendencies that accommodate a worsening

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depression or anguish that comes from emotional distress.

Now, I could elaborate. Much has been written about these factors, psychosomatic factors in illnesses, including hemophilia. In addition to that, however, one must consider the child itself. If the child has a considerable ego strength and is emotionally mature, then he is less affected by these adverse effects of emotional factors. So a further consideration, then, not only what happens in the illness itself, is the patient himself.

In view of that, I reviewed, as best I could, and I will point out I was under a handicap, the emotional state of the boy. For one thing, the father, and I think wisely, has withheld from this child any information about his legal involvements. So I could not really do a direct examination on the child myself because to do so would then make him aware there was something going on and further distress the child.

I did arrange, however, for him to be examined by a psychologist in his own community on the ruse that this was being done in an investigation of psychological factors in hemophilia and he cooperated and I had Rorschach tests, which is a personality test by a very competent psychologist, Dr. Ackerman, and I interpreted the data. Then, of course,

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1 I reviewed with Mr. Landwehr certain factors about his
2 son's development and so forth. Now, two factors stand out
3 rather strongly.
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5 Number one, of course, this child has already
6 been traumatized in the parental relationship by virtue
7 of the fact there is a divorce. This has been
8 mitigated to a large extent by considerable visitation
9 on the part of the father to lessen the impact of the
10 divorce. The psychological testing shows that this is a
11 highly intelligent, highly creative, sensitive boy who has
12 poor ego strength and is emotionally unstable. This is
13 reflected in his responses on the Rorschach test. So
14 then we have a boy who has, of course, what could be a
15 lethal illness, who is in a precarious stage
16 socio-psychologically because of the broken home and who also
17 has, complicating that, marked emotional instability.

18 It is my feeling that this boy will not tolerate
19 much more stress and that any additional stress heaped
20 upon that which he already has, in view of his own ego
21 strength, could very well result in a marked exacerbation
22 of his hemophilia condition which, of course, could be
23 crippling, if not lethal. Mind you, this is not to
24 say that any hemophiliac is going to break down under
25 stress, but the point I am making a hemophiliac with his

1 make up, in his situation is much more vulnerable to unusual
2 stress than another, say, the ordinary, if I may use that
3 term, hemophiliac.
4

5 Q Thank you, Doctor.

6 THE COURT: Are there any additional questions
7 you would wish to put to the Doctor, Mr. Paglino?

8 MR. PAGLINO: No, your Honor.

9 THE COURT: Mr. Kingham?

10 MR. KINGHAM: May I inquire, your Honor?

11 THE COURT: You may.

12 CROSS-EXAMINATION

13 BY MR. KINGHAM:

14 Q May I see what is Defendant's Exhibit B for
15 identification? This I take it are the test results?

16 A Yes.

17 MR. KINGHAM: Your Honor, could I have this ad-
18 mitted as Defendant's Exhibit B? I have no objection
19 to any of these being admitted for the Court to consider
20 so that I can use them during cross.

21 THE COURT: Yes. I think that would be
22 appropriate if you wish that I should consider these documents.
23 There is no objection?

24 MR. PAGLINO: No objection.

25 THE COURT: Very well, received.

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Gilbert-Cross

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2 MR. PAVLINO: Except, we would ask to have copies
3 submitted in 1 the original report so that the
4 doctor can keep original.

5 THE COURT: All right.

6 (Defendant's Exhibit A, B and C received.)

7 Q Where is your office Dr. Gilbert?

8 A 316 Northeast 14 Terrace, Miami.

9 Q Miami, Florida?

10 A Yes.

11 Q In addition to the Rorschach test that were
12 conducted on November 1st, what other psychological test
13 was conducted of Mark Landwehr?

14 A None other.

15 Q That was the only test?

16 A That is correct.

17 Q Did the psychologist who tested young Mr. Landwehr
18 interview him at all?

19 A Yes, she did. She just gave me an oral report.
20 Then she felt that the child was as I described, a highly
21 sensitive, emotionally unstable young man.

22 Q The disease known as hemophilia is indeed
23 and emotionally unsettling disease, is it not?

24 A There is no question about that. It requires
25 as an adaptation of the individual to the disease as well as

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the effect of the disease itself.

Q Mark Landwehr is 14 years of age, is that correct?

A Yes.

Q He lives with his mother, does he not?

A Yes.

Q Did you speak with Mr. Landwehr?

A No, I did not. You have to again recall that I was in a very difficult position of trying to make an evaluation and express an opinion without this boy knowing what was going on. This is a very unusual situation.

Q In any event, you never spoke with Mrs. Landwehr, is that correct?

A That is correct.

Q Did the psychologist who conducted the Rorschach test and the interview speak with Mrs. Landwehr, if you know?

A No.

Q So Mr. Landwehr was the only parent who knew that this test was being conducted, is that correct?

A I don't know what the exact mechanism -- how the boy was transported to the office. I simply indicated to Mr. Landwehr that I would like the boy examined by a Dr. Ackerman and suggested the subterfuge that Dr. Ackerman was doing a study on the psychology of hemophilia and make

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whatever arrangement he could to get the boy there.

Q Indeed, if Mark Landwehr, were to learn of the fact at age 14 that he was tricked in that fashion, that itself could be emotionally unsettling, could it not?

A There was no trick. All we did was to have him report to have a Rorschach done.

Q Could you answer the question, Doctor?

A I can't answer a question the way you are presupposing an answer to the question which I can't --

Q Let me rephrase it. You have testified that a ruse was used in order to have young Mr. Landwehr taken to the psychologist's office, is that correct?

A That's correct.

Q If young Mr. Landwehr were to learn of that, that in itself could be detrimental to his condition, could it not?

A No, not at all.

Q Thank you, Doctor. That's the answer I am looking for.

Do you, yourself, have any expertise in dealing with the psychological or mental problems of hemophiliacs?

A Not per se. I have had two hemophiliac patients in the course of my practice. It is not a usual disease and I think there are few due to the rarity of the disease. Other

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Gilbert-cross

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1 than that, in my practice I have done no independent
2 research except recently reviewing the material on hemophilia

3 Q Of course you were hired by Mr. Landwehr to see
4 that the tests were conducted, to give an opinion, and
5 to come to New York to express your opinion to Judge Ward,
6 is that correct?
7

8 A Not to do the tests. He came to me for an
9 opinion and I said that my opinion wouldn't be worth much
10 unless it was substantiated by an evaluation of the boy.
11 So it was my idea that the tests be done.

12 Q But you did that in the context of being hired
13 by Mr. Landwehr to present an opinion at his sentencing
14 hearing, is that correct?

15 A Yes.

16 Q And you knew that at the time you undertook that
17 obligation?

18 A Yes.

19 Q To your knowledge, has Mark Landwehr ever received
20 psychiatric counseling?

21 A Not directly.

22 Q Could you explain?

23 A Well, I discussed with his father had he ever
24 received any psychiatric treatment from a psychiatrist and
25 he indicated no.

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2 Q Have you ever reviewed any medical records of
3 Mark Landwehr's?

4 A No.

5 Q To your knowledge, has Mr. Landwehr Senior,
6 from your conversations with him, expressed any desire to
7 obtain psychiatric care for his son?

8 A No. I don't think there is any need for it
9 at the moment.

10 Q So long as Mr. Landwehr isn't put in jail, is
11 that correct?

12 A Let me express my answer to your question in
13 terms of much more meaning. As long as this child is not
14 under any unusual stress, then the secondary determination
15 is that Mr. Landwehr's going to jail would be an unusual
16 stress on the child.

17 THE COURT: How frequently does the child see
18 his father or has he seen him over the past year?

19 THE WITNESS: Certainly at least --

20 THE COURT: As far as you know.

21 THE WITNESS: -- at least monthly, Mr. Landwehr
22 indicated to me he makes a point of seeing the boy as much
23 as he can. Rarely does as much as a month go by where he
24 doesn't see him. That is only when he is out of the
25 state on business. Other than that, he sees him as frequently

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Gilbert-cross

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2 as he can.

3 Q You, of course, have learned that from speaking
4 with Mr. Landwehr, is that correct?

5 A That is correct.

6 Q Do you know how long a period Mr. and Mrs.
7 Landwehr have been either separated or divorced?

8 A I do know, but I did not bring my notes from my
9 interview with Mr. Landwehr with me.

10 Q But you learned that from speaking with Mr. Landwehr,
11 is that correct?

12 A Yes.

13 Q During the time of the separation and divorce
14 Mark Landwehr has lived exclusively with his mother, is
15 that correct?

16 A That is correct.

17 Q To your knowledge?

18 A Yes.

19 MR. KINGHAM: I have nothing further.

20 THE COURT: Mr. Paglino?

21 MR. PAGLINO: Nothing further, your Honor.

22 THE COURT: Thank you very much, Doctor.

23 (Witness excused)

24 THE COURT: You may proceed, Mr. Paglino.

25 MR. PAGLINO: We apologize if we intruded on the

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1 Court's lunch hour. We didn't realize that. We are perfectly
2 willing to recess.
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4 THE COURT: No, that's all right. The morning
5 matters ran longer than I anticipated, but there is no
6 problem.

7 MR. PAGLINO: Your Honor, I have represented
8 Mr. Landwehr since the initiations of these proceedings,
9 which started with the grand jury investigations. I think
10 I am quite familiar with all aspects of this case, perhaps
11 even more familiar than Mr. Kingham's office, certainly
12 more familiar than New Jersey's office. I think I have
13 the overview, if I may take that liberty.

14 I also am familiar with the relationship of Mr.
15 Landwehr and his family, having performed certain services
16 for that family, the wife, and having met the child and
17 seen the relationship with Mr. Landwehr -- I have three
18 children. I know what a relationship is. I am a former
19 school teacher. I have some expertise in this matter. There
20 is a very close, compelling relationship. I have been
21 given one guideline during all of this. "My son, my family
22 is not to know."

23 If there comes a point where it creates a problem,
24 he must still not know. I will take whatever happens,
25 he must not know. That is the posture of the case which we

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2 have had. Everyone has been aware of that and I think
3 Mr. Kingham has been most cooperative in this respect.

4 Judge, Mr. Landwehr is perhaps not unusual
5 in his background. He is a college graduate. He worked
6 himself through college. He then came from a very humble
7 background, poor circumstances; immigrant father who was
8 a waiter and he did have the ability, some good in him
9 where he worked himself out of this situation, got through
10 college, City College, Bernard Baruch Division, I believe,
11 and attempted to make something of himself.

12 He has led, I think, under extremely compelling
13 circumstances a fairly forthright and in some respects
14 exemplary life, especially with this burden of the hemophiliac
15 son, which is a horror to any parent, and he has performed
16 his obligations not only for his son, but for many hemophiliacs
17 by working in the national organizations to arrange the
18 production of serum and blood; so he has done some good. There
19 is some on the plus side.

20 THE COURT: I have a letter here from the
21 National Hemophilia Foundation dated October 28th, indicating
22 that Mr. Landwehr is an active member of the metropolitan
23 chapter of the National Hemophilia Foundation and apparently
24 has been active in fund raising for that particular
25 foundation.



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2 MR. PAGLINO: Your Honor, turning to the
3 offenses which this man is charged, I think in an overly
4 broad indictment he was charged essentially with bankruptcy
5 frauds. It is important to note that Mr. Landwehr
6 never took one penny out of these businesses for himself.
7 Not one cent. Every nickel of income was reported
8 and was accounted for in the business. The problem, if
9 the Court would recall, is a rather unusual one, and that
10 is that the expenses, the true amount of expenses were
11 lowered instead of raised.

12 Usually in bankruptcy matters it is the opposite:
13 They hide the income or steal out of it and they puff up
14 the expenses. This was, as I recall it, to keep these
15 businesses afloat, an attempt to keep them afloat.

16 THE COURT: I take one exception to one thing
17 you said, and you better clarify it in my mind. My
18 understanding was here salaries continued while the Court
19 protection was afforded these companies and
20 apparently this operation was perpetuated by the filing of
21 statements which would lead the persons looking at them
22 to conclude that these business were starting to turn
23 the corner or turn a profit.

24 Now, if I am wrong on that, say so. I don't
25 think the government has said he dipped in, necessarily, and

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took big globs of assets. They may say that, and I will listen to them on that, but my understanding was that what we had here was a continuing taking by Mr. Landwehr and Mr. Daspin of compensation from these companies while the companies were being operated under the Court's protection.

MR. PAGLINO: Your Honor, initially there were salaries but my reading of the file and understanding is the salaries were first cut and then stopped altogether and I see orders in the bankruptcy files to that effect, which are in this building. If your Honor would wish I could go down to the clerk's office and we could bring those files up and find those orders. Is that the case, that the salaries were cut and then stopped?

THE DEFENDANT: Not by Court order.

MR. PAGLINO: By how?

THE DEFENDANT: By myself.

MR. PAGLINO: I know they were stopped. It's reflected in the files, because I questioned that exactly as your Honor did and made a trip to the files to look at the actual bankruptcy editions.

In any event, your Honor, involved in this case are also some of the leading members of the Bar who represented defendants in this case, including a well known bankruptcy attorney, Mr. Izzy Leinwan who is well known, the

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2 firm of Sacks, Bacon was involved in this, Sanford
3 Silverman, a bankruptcy man and so forth, and other lawyers,
4 and accountants and trustees in bankruptcy and what not.

5 THE COURT: You know, I have a little exposure
6 to this matter since a number of years ago, if my memory
7 serves, I was sitting as the Part I Judge when some of
8 this came before me. At that time, back in 1973 or 4, there
9 were allegations of wrongdoing and my recollections at
10 that point, the matter, which may have been entitled Bench
11 Transport Company, was transferred by me from this court to
12 one of the courts upstate because it appeared to me that's
13 where the matter belonged. So I know a little bit about
14 the background of this particular matter from having sat
15 on this Court for several years.

16 MR. PAGLINO: That is absolutely correct, your
17 Honor. Your memory is perfect. That matter, which fell
18 before you, involved a replevin action on certain trucks,
19 as I recall. Later it was ruled in favor of the Bench
20 Transport upstate. That was absolutely true.

21 The point is, your Honor, that the defendants
22 in this case, all of them, not just Mr. Landwehr, were kind
23 of carried along by this thing once it had started. Your
24 Honor, in sentencing the codefendants in this case, I believe
25 gave them probation. The United States Attorney's office

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2 in this district has taken the position in the PSI. as
3 I read it that all of the defendants had equal culpability.
4 None had more than the other. That is the way I read
5 the conclusion in the PSI. I think I made note of that.
6 I tend to agree with that conclusion. I do not feel
7 there is any untoward culpability on the part of Mr. Landwehr.
8 I think it is exactly the same. They are all in it together,
9 as it were, and Mr. Landwehr was as guilty as them in filing
10 or aiding and abetting in the filing of these improper
11 statements.

12 He pleaded guilty to that, I think quite candidly,
13 before your Honor. The government did not have to go to
14 trial. We were prepared, if your Honor would recall, to
15 go to trial on this, but rather than doing that we entered
16 into an agreement with the government and pled freely.
17 I think Mr. Landwehr was extremely candid at the questioning.

18 Mr. Landwehr had entered into a government
19 imposed stipulation or agreement that he would stand
20 ready should the government wish to question him and put
21 him before a grand jury. He has stood in the same position.
22 I myself accompanied Mr. Landwehr twice at my expense, I
23 might add, Judge, because he is down and out at this point,
24 as I am here today, and offered to go before the grand jury
25 when summoned. On both occasions they declined to call

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2 him before the grand jury. He has stood ready and has
3 made himself available. He has met numerous time . Apparently,
4 though, it is my understanding that they wish information
5 which he does not have, the test of the matter, though, is
6 he is absolutely willing, stays willing, and we repeat
7 to this Court, to go before any grand jury anywhere, be
8 sworn and answer any question put to him, Judge, any question.
9 I make that representation to the Court.

10 It is not that he is an unreasonable person. I
11 don't think he is. He is not what I call a hardened criminal.
12 I don't think in my entire practice, which included, all
13 though not as much now, but in the past, quite a bit of
14 criminal work, I think I have had two of my defendants to
15 my home and one was Mr. Landwehr. I see nothing to be
16 gained by putting this man in jail . The government
17 has broken him. They put him in a position where the IRS,
18 from these very companies, is now looking to recover from
19 him all of the withholding taxes which were not paid at
20 the time because the accountants didn't pay them, but
21 because he was the president, they were looking for him,
22 and I think this Mr. Daspin for approximately
23 \$800,000 in tax moneys which I have been asked to defend.

24 I don't know where to start with the thing,
25 but that's in this district. So he is pretty much at the

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2 end of the line. He suffered enormously financially, obviously,
3 but other than that, this has been a long period of time,
4 and quite rough on the guy. He obviously has certain
5 problems himself.

6 Judge, we would ask the Court to view this,
7 and especially view that there is no more culpability
8 on the part of this man than anyone else who was in this
9 transaction and who was indicted. In view of that, in
10 view of the fact that he knows that should he ever get in
11 any other type of trouble, assuming your Honor were to show
12 some mercy in this case and put him on probation, he
13 knows that if ever he gets that much out of line, that
14 your Honor could say, regardless of everything to the contrary,
15 "You have let us down. We accepted your representations,
16 you let us down; you are going to jail regardless of
17 anything," and he holds -- he knows this, your Honor.
18 This is not a stupid man. He is an intelligent man. He
19 has gotten into a business now, a sunglass and accessory
20 business, so that he has been able to do well at it and
21 make a living, Judge. We have watched him do that even
22 under these adverse circumstances. I don't see where this
23 is a compelling case for jail.

24 I would like to point out about the PSI,
25 your Honor. I came up with him to do the PSI and they

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2 wanted income tax returns. He signed certain forms.
3 They turned out to be the wrong forms. They couldn't get
4 the income tax reports. Finally he came up and pointed out
5 that this codefendant, Griffin, had his forms and Mr. Forsonito
6 was then able to get copies of his tax return.

7 Additionally I finally went to the IRS and said
8 is there a form, a correct form. I got it and had him
9 sign them and personally delivered them to Mr. Forsonito.
10 We have done whatever we could. The business records,
11 unfortunately, are in the U.S. Attorney's offices. The
12 last time I went to the New Jersey one, they hit me with
13 a subpoena to go before the grand jury to produce certain
14 letters that the U.S. Attorney had given me a few hours
15 before. So I don't even want to go over there if
16 I don't have to. It has been a bizarre experience, your
17 Honor, let me say that.

18 MR. GIFIS: If I might just add some remarks --

19 THE COURT: I don't think Mr. Paglino had
20 finished.

21 MR. GIFIS: I wanted to because he had left
22 this area of cooperation, I thought, with the grand jury.
23 I can come back to it.

24 THE COURT: If you want to add anything, professor,
25 I would be more than happy to let you once he finishes his

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2 presentation and then I will hear from Mr. Landwehr,
3 but I will certainly give you that opportunity. If there
4 is something he hasn't covered that you feel should be
5 presented, I certainly will hear you.

6 MR. PAGLINO: I am going to close with this
7 possible correction. I don't think it is necessary, but
8 I would like to point out I have accompanied Mr. Landwehr
9 through all these proceedings. There has not been a night
10 that he has not called or written a letter to his son.
11 I have been present where we have always attempted to make
12 arrangements so he could meet his son wherever we happened
13 to be during these horrible proceedings, so he could take the
14 son to a ball game or something. I have not been able to
15 spend as much time with my son as he has with his.
16 I think he is extraordinary in that regard. Having had some
17 problems with children with physical disabilities myself,
18 I know the burden that this man is carrying. Nothing anyone
19 does can lighten that load, but you can allow this man,
20 subject to your supervision, your Honor, to remain free to
21 carry that burden.

22 Your Honor, I have never ever begged a judge
23 for anything in my practice. I never have done that. But
24 I am going to beg you to let this man stay free on probation,
25 and let him administer -- to do whatever he has to do under

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2 what conditions you wish to impose. I know I can't be a
3 surety for my client, but I guarantee you if this man gives
4 you his word, he will keep it. No one has ever accused
5 him of not keeping his word at any expense. I don't know
6 how to state that more strongly, your Honor. Please.

7 Thank you.

8 THE COURT: Thank you, Mr. Paglino. Professor,
9 if you wish to add anything to what Mr. Paglino has
10 said, although I usually hear from but one defense attorney,
11 I will hear from you.

12 MR. GIFIS: Thank you, your Honor.

13 Because of my proximity to the office of United
14 States Attorney in the District of New Jersey, I participated
15 more extensively than Mr. Paglino did in the conferences
16 that were had in that district. Until about a week ago,
17 the letter that your Honor was to get, instead of saying
18 extremely uncooperative, and I think if you look at page 2
19 of that letter, the letters UN appear to me have been typed
20 in on that letter. The letter was to say extremely
21 cooperative and I would like to refer to the history of this
22 matter for your Honor's benefit.

23 Just take a glance at that letter. I have examined
24 it under a magnifying glass. There is no question in my
25 mind but the UN has been added to that letter. The letter was

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1 prepared to say that he had been cooperative, because he
2 had been. If I can just bring your Honor through the
3 history of this matter, I was present at a session on
4 Wednesday of the week -- the first week of November until
5 quarter to ten at night -- where Mr. Landwehr was discussing
6 informally in preparation for grand jury testimony certain
7 matters of interest to the government in the District of
8 New Jersey. He was to come back on the following Tuesday,
9 which would have been the third -- no, not the third, the
10 sixth. He was to come back on the following Tuesday and
11 have further preparatory material and then on that Wednesday
12 give the testimony to the grand jury.

13
14 On Friday, November, I was attending a conference
15 in Princeton and I got an urgent call from the United
16 States Attorney in reference to the homicide of ex-prosecutor
17 Gallino. I was told that there was a possibility, however
18 remote and uncertain, at that time, that Mr. Landwehr's life
19 might be in jeopardy. I should try to locate him and have
20 him sort of disappear for a few days until the government
21 could ascertain whether or not Mr. Gallino's homicide was
22 connected with cooperation in the so-called Daspin case
23 in the District of New Jersey.

24 I was able late Friday night to reach Mr. Landwehr
25 and the government wanted to put him in the Identity Program

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2 or offer him protective custody or some other arrangement .
3 It is strange, your Honor, that they would do that with
4 a witness they say was extremely uncooperative. The truth
5 is that at that point, in the government's opinion, although
6 Mr. Landwehr had been hesitant in the beginning, we had had
7 a long struggle about the agreement that he pleaded under.
8 We disagreed vigorously with the last paragraph in that
9 agreement which says that if the deal doesn't work,
10 anything he says in the course of his cooperation can be
11 used against him.

12 I recommended against the agreement on that ground
13 because the government could have obtained information and
14 then decided that he wasn't being cooperative, asked that
15 the plea be withdrawn, go to trial and use the information
16 he gave against him. Apparently for the first five or
17 six meetings between the government and Mr. Landwehr, which
18 occurred without counsel, Mr. Landwehr was so insecure
19 in that particular issue that although he did not outrightly
20 fabricate or lie in the words of the government attorney,
21 he lied through omission. He failed to give a completely
22 candid description of some of the matters that they were
23 involved with.

24 I came into the scene at that point and we worked
25 out a sort of a superseding oral agreement that said not

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withstanding paragraph E, in fact nothing that he says in these weeks can be used against him.

Then he began to cooperate in the words of the government "more freely" and they then said that he would come before the grand jury. Through a confusion, I was not notified of the grand jury date and that's when the problem developed. He was given a letter of immunity, he was called before the grand jury, he gave some answers they weren't happy with -- and I don't object to screening a witness before the grand jury, your Honor; but I do object to not sending the witness to the grand jury because the government doesn't believe the witness is giving truthful or helpful testimony to their cause. I think the grand jury has a right to hear Mr. Landwehr's testimony on these matters, whatever it is. He stands ready to appear before the grand jury at any time the government wishes to subpoena him and bring him there. And if he lies, they have perjury and if they can prove perjury, they can sentence him or a Court can sentence him for that perjury.

What happened, your Honor, is that Mr. Landwehr became alarmed. I bought this morning the headline from the Trentonian which you can see from that distance, "Mob Lawyer Explains Before He Can Blab" and in that, specific reference is made to Michael Daspin. I quote to you

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"In hopes Gallino would help in the on-going probe of bankruptcy fraud in the Garden State, Judge Herbert Stern of the United States District Court in New Jersey had granted both he and Danville, New Jersey business man Michael Daspin immunity from prosecution." They went on to discuss the bankruptcy investigation.

It is one thing to cooperate in hope of getting a favorable treatment from the Court and so forth. It is another thing to put your life in jeopardy. I think Mr. Kingham will admit that the procedures utilized in the District in New Jersey in the particular case, immunity was granted in open court, witnesses were bumping into each other that were going to the grand jury, other immunized witnesses, Phil would see them at the court; he was there.

I am not going to elaborate on this any further, but it is not clear to me at all that the "uncooperative" nature of this man's testimony. He made ten trips to the District of New Jersey at the government's expense in terms of vouchers. I don't think that's what you do with an uncooperative witness. I think he gave lots of information. As a matter of fact, he gave so many admissions and so much information that the government indicated to me that he had been effectively neutralized, meaning he could not be a witness for or against either party based on his comments.

1 I do not know, and I asked them why didn't you take Mr.
2 Landwehr before the grand jury? He was there on two
3 occasions on Wednesday when a grand jury could sit and they
4 said we choose not to. I know your Honor can say I will
5 disregard that whole issue of cooperation. I would ask if your
6 Honor is going to sentence importantly on the basis of
7 this man's cooperation or lack of it, that there is a serious
8 factual question; and in line with recent sentencing decisions
9 of the Court of Appeals, that you should conduct a sentencing
10 inquiry as to whether or not there has or has not been
11 cooperation.
12

13 You might decide to discount it altogether, which
14 is your right, because the agreement merely said that he
15 was entitled to have the fact of his cooperation and nature
16 of it revealed to your Honor, but I think the words extremely
17 uncooperative is misleading. He has been very cooperative.
18 Whether he has told the truth or not, who can say? The
19 only people that can ultimately say will be the grand jury
20 that hears his testimony and then a trial court should that
21 grand jury charge him with perjury. That's the only point
22 I would like to make, that he spent a lot of time.

23 THE COURT: Thank you very much, Professor Gifis.

24 I would ask Mr. Landwehr at this time if he has
25 anything he wishes to say in his own behalf or any information

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2 he wishes to present to the Court in mitigation of punish-
3 ment.

4 THE DEFENDANT: Well, your Honor, I have pleaded
5 guilty and I know what I pleaded guilty to. I felt it
6 was the best way to handle my overall situation and I
7 still stand in that position.

8 THE COURT: Thank you.

9 I am going to inquire of the United States Attorney
10 if he has comments or recommendations prior to sentencing.
11 I would hear in order from the United States Attorney for
12 this District and the United States Attorney for the District
13 of New Jersey.

14 MR. KINGHAM: I believe under these circumstances,
15 your Honor, I can speak for both districts, since Mr.
16 Goldstein is himself not here, and I will be very brief.

17 The government has no recommendation with respect
18 to sentencing. We take no position with respect to what
19 specific sentence Mr. Landwehr should have. That, of course,
20 is a matter for the Court, after consulting with the probation
21 officer; but I would point this out after hearing not only
22 the testimony, but also the arguments of counsel today,
23 that no one knows better than yourself the stresses of life
24 faced by persons who are unfortunate enough to have
25 certain physical afflictions. But I ask the Court to

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2 consider how Mr. Landwehr lived up to his responsibilities
3 here with respect to his own personal conduct. Granted,
4 he has been a good father to his son who unfortunately
5 has hemophilia. But what he has done here is not only
6 committed the underlying crime and indeed committed a
7 previous crime as the Court knows in connection with the
8 Premiere Albums case, but he has not told his son, or it
9 appears his wife, and insists that no one tell his son,
10 then comes to court and suggests to the Court that if he
11 should go to jail and his son learns of that, that in
12 addition will traumatize the son even further and indeed would
13 be detrimental. But I ask the Court to consider what has
14 been more detrimental here than that Mark Landwehr learn
15 of these circumstances from someone else or from his father,
16 who I suggest bears the ultimate responsibility. Not only
17 for his conduct, but for informing his son; but that, of course,
18 is Mr. Landwehr's judgment to exercise, be it right or wrong.

19 So I ask the Court to consider that and also to
20 consider Mr. Landwehr's prior conviction here, which is
21 something that has seemingly been ignored by Mr. Paglino
22 throughout his remarks here. It is not a jaywalking
23 conviction, it is a misdemeanor to which Mr. Landwehr pleaded
24 guilty, even though he had been indicted, I believe, for many
25 more crimes and involved counterfeit pirated tapes.

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MR. PAGLINO: May I object since it was a conditional discharge at this point subject to dismissal, it shouldn't even be considered in the PSI report as I understand the law.

MR. KINGHAM: No, it was not adjourned in contemplation of dismissal, the defendant pleaded guilty to a misdemeanor. Others in that case had that disposition.

THE COURT: I note that a fine was imposed and it was, I gather, the condition that if the fine were paid, that will terminate the matter. As I understand it, that fine was in fact paid on March 6, 1974. So I have down, I must say, a plea of guilty in Manhattan Criminal Court and the imposition of a sentence, to wit, a fine and the fine being paid.

MR. KINGHAM: That's what I understand, your Honor. It is a criminal conviction.

THE COURT: That's what I understand as well and I would suggest there is in this case a conviction to what would appear to be a misdemeanor. In any event, I don't regard that misdemeanor as coming anywhere close to the level of the charges which are before me today.

MR. KINGHAM: Nor does the government, your Honor. I merely pointed out for the Court's consideration.

THE COURT: Very well.

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2 MR. KINGHAM: And also the Court as usual
3 perceptively saw the error of Mr. Paglino's argument with
4 respect to not receiving any income here. I have in
5 my office, and among the books and records of these
6 corporations, substantial payroll documents and checks with Mr.
7 Landwehr's signature on them which reflect his receipt of
8 substantial sums of income from all of the bankrupt
9 companies here during the period of the Chapter 11
10 proceedings.

11 I suggest that we have made our position on that
12 clear in the factual discussion in the pre-sentence
13 report, which I think has the overall figures. I was
14 asked by Mr. Forsenito how much money was involved. I
15 think he supplied a figure, I don't have it at this moment,
16 your Honor.

17 With respect to that, I would also ask by whom the
18 defendant here was carried along in this operation.
19 Although the government did not express to the probation
20 officer an opinion as to culpability, that is hardly to
21 be read, as Mr. Paglino suggests, as a suggestion that
22 all defendants here were equally culpable.

23 THE COURT: I had occasion, for example, to re-
24 view the pre-sentence reports and ultimately to
25 sentence, for example, Lou Wood. I could not fairly say

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1 that Lou Wood could be said to be equally culpable with
2 Mr. Landwehr.
3

4 MR. KINGHAM: Nor could we, your Honor. Likewise,
5 Mr. Griffin.

6 THE COURT: Mr. Griffin is another example. I
7 would suggest that I started with Mr. Wood because I thought he
8 was least culpable of this group of three. I thought
9 Mr. Griffin was somewhat more culpable and I have concluded
10 after reviewing matters that, taken on any basis and from any
11 prospective, Mr. Landwehr of the three was most culpable
12 and it did not go down well with me to have the three allegedly
13 equated together, cited as people who deserved probation.
14 I just do not see the identical nature as far as those three
15 gentlemen are concerned. I put Mr. Daspin to the side.
16 He is Judge Stern's concern and I will leave Judge Stern to do
17 what he believes right. But I do not, quite candidly,
18 equate Mr. Wood or Mr. Griffin with Mr. Landwehr.

19 MR. KINGHAM: Your Honor, finally with respect
20 -- not quite finally--with respect to the defendant's
21 problems with the Internal Revenue Service, one would have
22 the impression from Mr. Padlino's argument that the govern-
23 ment is some how responsible for the fact that Mr. Landwehr
24 is the responsible officer of certain corporations which
25 have a substantial six figure deficit in paying employee

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2 withholding taxes. I might point out that the government
3 is hardly responsible for that, nor for the efforts on the
4 part of the Internal Revenue Service to collect it.

5 And I might point out Mr. Landwehr is hardly a
6 babe in the woods on this issue because it is he who
7 assured the bankruptcy Judges and referees that these moneys
8 had been paid and they had not and, therefore, this huge
9 outstanding liability exists. It is a civil matter. With
10 respect to the criminal case we take no position as to the
11 merits of that, but we think it ought to be pointed out,
12 since Mr. Paglino makes such a point of somehow saddling
13 the government with Mr. Landwehr's personal obligations
14 with respect to employee withholding taxes.

15 THE COURT: I don't think he really does that,
16 but you are entitled to argue it.

17 MR. KINGHAM: Finally, and I mean finally, the
18 question of cooperation, again about which both Professor
19 Gifis and Mr. Paglino have made a point. There is no
20 need for a sentencing inquiry here, a factual inquiry
21 as to the nature of Mr. Landwehr's cooperation, any more
22 than there is the need for the government to put before
23 grand juries persons with respect to whom they are not
24 satisfied about the complete candor of answers. There may
25 well come a time when Mr. Landwehr, if he desires to

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1 cooperate, may give answers which are satisfactory to the
2 government's way of thinking based upon the other information
3 available to the government to put before a grand jury,
4 but there is hardly an obligation to do that.
5

6 Our position on cooperation is very simple, and
7 that is, your Honor, that Mr. Landwehr has been uncooperative;
8 that Mr. Goldstein's office in New Jersey simply is not
9 satisfied with the product of the interviews that they have
10 conducted with Mr. Landwehr and we see no need to go into
11 detail any further.

12 THE COURT: Thank you. Mr. Kingham.

13 The Court is prepared to impose sentence.

14 I have before me a defendant, age 45, who has
15 pleaded guilty to one count of a 22, I believe it is,
16 count indictment. He has pleaded guilty to bankruptcy
17 fraud, a charge which carries with it a maximum penalty
18 of \$5,000 and/or five years in prison.

19 Two, the government charged that after the defendant
20 and his codefendant, Mr. Daspin, acquired several trucking
21 companies, they stopped paying creditors and took and
22 continued to take salaries. There were several companies
23 involved and it is my understanding, the government contends,
24 that the assets and equipment of these various companies
25 were commingled and it was sought to place them under the

1 protection of the Bankruptcy Act and ultimately of the
2 Court. It is my understanding, as I read it, that the
3 defendants hoped, while not paying bills because of
4 the protection afforded by the Bankruptcy Act, to continue
5 to draw salaries, and they perpetuated this by filing
6 false financial statements with the Court. This is a
7 crime not only upon the public, but also upon the Court,
8 something which this Court looks upon in a most serious
9 light. Needless to say, so did Congress when Congress
10 determined that a five year penalty would be an appropriate
11 maximum sentence.
12

13 The defendant has written to the Court, and
14 I have his letter before me. It does not appear to the Court
15 to be a full and complete and frank exposure of the matter.
16 It appears from what I have seen that the defendant has
17 chosen in his explanation to limit his involvement, to
18 limit matters to a count involving, if I remember
19 the number, \$845. True that is the count to which he
20 pleaded guilty, but I can not consider that matter in a
21 vacuum. This was a scheme and plan to utilize the
22 Court for gain, a matter which the Court views seriously.

23 There has been some talk of a prior conviction.
24 I believe it to have been a conviction on a misdemeanor.
25 I believe that the sentence was a fine and that the fine

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1 was paid. I determined not to penalize the defendant
2 by virtue of that conviction, but to focus on the charges
3 here and the acts of the defendant as they relate to
4 those charges.
5

6 The matter is made more serious by the fact that the
7 defendant is a college graduate, a graduate of the City
8 University of New York with a Bachelor's degree in Business
9 Administration, a man who has been involved in business for
10 a number of years, who as his attorney pointed out, even
11 today, is successful in his business endeavors. This is
12 a bright, well educated, highly capable man. What he did
13 could not be said to have been done due to stupidity, rather
14 to venality.

15 I have reviewed all of the facts and would close by
16 a comment with regard to the matter of cooperation, which
17 has been adverted to here. I have a letter from the United
18 States Attorney which has been mentioned indicating that the
19 defendant has been "extremely uncooperative." I take
20 that letter and I put it aside. I view cooperation as either
21 a positive plus or a zero. Here, because the government
22 has to tell me if he is cooperative has chosen
23 not to, I have a zero. The matter is something which while
24 it may have helped Mr. Landwehr in connection with the
25 sentence I am about to impose, will not be used by this Court

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2 to penalize him. It is a zero. It is not a minus and it
3 is not a penalty. I have to take the statement of the
4 United States Attorney, whether in his view and judgment, with
5 all the background that he has, there has been a positive
6 assistance rendered by Mr. Landwehr. He has said no.
7 Whether the word cooperate appeared previously, the letter as
8 it was presented to me says, "extremely uncooperative."
9 I put that letter aside and as I say will not consider it
10 as a penalty.

11 I have revied all of the factors here and impose
12 the following sentence:

13 It is adjudged that on Count 30, the defendant
14 is hereby committed to the custody of the Attorney General,
15 or his authorized representative, for imprisonment for
16 a term of three years. That is the sentence of the Court.
17 I believe there are some outstanding counts. I am prepared
18 to entertain the motion.

19 MR. KINGHAM: Your Honor, the outstanding counts
20 are Counts 1 through 29 and the Counts 31 through 33.
21 The government would have no objection to a defense motion
22 to dismiss those counts.

23 MR. PAGLINO: We so move, your Honor.

24 THE COURT: Counts 1 through 20 and 31 through
25 33 are dismissed. The defendant is remanded.

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2 MR. PAGLINO: May we ask the Court's indulgence
3 to stay the imposition of this sentence for a short period
4 of time in order to, number one, prepare the son for
5 this and, number two, so the defendant may get his affairs
6 in order? We would ask the Court's indulgence, your
7 Honor.

8 MR. KINGHAM: Your Honor, the government objects
9 and moves for a remand.

10 MR. PAGLINO: We have never failed to show for any
11 appearance before any court, your Honor, and I represent
12 that this will be the case. His passport has been taken
13 from him. He has no funds. He has no place he can go. We
14 would ask for a stay until whatever the Court will, but at
15 least after Christmas, Judge.

16 MR. KINGHAM: The government is fast in its position,
17 your Honor.

18 THE COURT: Very well. The defendant is remanded.

19 MR. PAGLINO: Your Honor, the District of New
20 Jersey was to move at this time through its Assistant for
21 a dismissal of all charges. I would like to know if that's
22 been done.

23 MR. LAPTOOK: No, it has not. The agreement
24 was it will be done on sentencing. We will move
25 before Judge Stern post haste on the indictment as it relates

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2 to the defendant Landwehr.

3 MR. KINGHAM: Thank you, your Honor.

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Michael Gilbert	5	11		

EXHIBIT INDEX

<u>Defendant</u>	<u>Identification</u>	<u>In Evidence</u>
A	8	12
B	8	12
C	8	12

Da93

TBK:dag

November 18, 1977

Honorable Robert J. Ward
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: United States v. Landwehr
77 Cr. 196

Dear Judge Ward:

Enclosed is a letter addressed to you from the United States Attorney in the District of New Jersey in connection with the sentencing in this case which is scheduled for November 21, 1977.

The active debriefing of Mr. Landwehr occurred in the District of New Jersey in connection with cases under investigation by the United States Attorney in that district. Accordingly, this office found it unnecessary to conduct extended interviews with Mr. Landwehr because the thrust of his cooperation was necessarily in New Jersey.

The United States Attorney in this district takes no position with respect to Mr. Landwehr's cooperation other than to forward the enclosed letter. Arthur S. Goldstein, the Assistant United States Attorney in charge of this matter in New Jersey, will be present at the time of Mr. Landwehr's sentence.

Respectfully,

ROBERT B. FISKE, JR.
United States Attorney

By:

T. BARRY KINGHAM
Executive Assistant
United States Attorney



United States Department of Justice

UNITED STATES ATTORNEY

FOR THE DISTRICT OF NEW JERSEY

NEWARK, NEW JERSEY 07102

(201) 645-6421

PLEASE ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
NEWARK, N. J. 07102
AND REFER TO
ASG/pw

November 17, 1977

Honorable Robert J. Ward
United States District Judge
United States Courthouse &
Post Office Building
Foley Square
New York, New York 10007

Re: SENTENCING OF PHILIP LANDWEHR

Dear Judge Ward:

I am sure the Court is aware that the defendant Philip Landwehr was charged in Indictment No. 77-196 (RJW) in the case of United States v. Landwehr, et al. in the Southern District of New York, with having committed thirty-three criminal offenses which included charges of conspiracy, bankruptcy fraud and obstruction of justice. In addition, Mr. Landwehr was named as a defendant in the case of United States v. Daspin, et al., Criminal No. 77-238 in the District of New Jersey wherein he was charged with conspiracy, bankruptcy fraud and obstruction of justice.

Pursuant to an agreement entered into by the defendant Landwehr and the United States, the defendant entered a plea of guilty to Count 30 of the New York Indictment. In exchange for his plea to the aforementioned offense, the United States agreed to dismiss the remaining counts of the New York Indictment, as well as the entire New Jersey Indictment, on the date of Mr. Landwehr's sentence. In addition, the United States agreed that it would, prior to the time of sentencing, advise the Court of the nature and extent of any cooperation the defendant Landwehr had provided.

In this regard, Mr. Landwehr has been afforded the opportunity to meet with me and other members of the staff of the United States Attorney's Office for the District of New

Jersey on several occasions. Based upon these meetings it is the government's position that Mr. Landwehr has been extremely uncooperative.

While it is not the policy of this office to recommend what sentence the Court should impose, it is the government's belief that this information should be available to the Court as it is determining what sentence should be imposed upon the defendant Landwehr.

Respectfully,

JONATHAN L. GOLDSTEIN
United States Attorney

BY: ARTHUR S. GOLDSTEIN
Assistant U.S. Attorney

cc: Joseph Paglino, Esq.

Steven Giffis, Esq.

T. Barry Kingham
Assistant U.S. Attorney
for the Southern District of New York

United States of America vs.

Da96

United States District Court for

DEFENDANT

WOOD

DOCKET NO.

77 CR 125

JUDGMENT AND PROBATION/COMMITMENT ORDER

10-25-77

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
9 16 77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Mitchell M. Bailey, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea.

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly
conspiring to make false oaths and accounts in and in relation to
bankruptcy proceedings

'Title 18, S Code, Section 371'

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

imposition of sentence is suspended on count 1, and defendant is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court

Defendant is fined the sum of \$2,500 on count 1 on the special condition that defendant pay the fine provided for in this judgment in installments arranged through the Probation Office

Counts 22 thru 31 are dismissed on motion of defendant with the consent of the Government.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

JOHN J. WARD

Date 9-16-77

CERTIFIED AS A TRUE COPY ON

THIS DATE 9-16-77

BY

CLERK
DEPUTY

Da97

United States District Court for

United States of America vs.

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

GERALD GRIFFIN

DOCKET NO. 77 CR. 196

JUDGMENT AND PROBATION/COMMITMENT ORDER

NOV 17 1977

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
9	26	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Thomas Fitzpatrick, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENTDefendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly
conspiring to make false oaths and accounts in and in relation to
bankruptcy proceedings.**

(Title 18, U.S. Code, Section 371)

SENTENCE
OR
PROBATION
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ~~XXXXXXXXXX~~**Imposition of sentence is suspended on count 1, and defendant is placed on probation for a period of FIVE (5) YEARS, subject to the standing probation order of this Court.****Defendant is fined the sum of \$3,500 on count 1 on the special condition that defendant pay the fine provided for in this judgment in installments arranged through the Probation Office.****Counts 5-31 are dismissed on motion of defendant with the consent of the Government. These counts are dismissed as to defendant Gerald Griffin only.**SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends.

COMMITMENT
RECOMMEN-
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

ROBERT J. WARD

Date 9-26-77

CERTIFIED AS A TRUE COPY ON

THIS DATE 7-27-77

BY

NOT CLERK
(DEPUTY)

United States of America vs.

United States District Court for

DEFENDANT

PHILIP LANDWEHR

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.

77 Cr. 196

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (7/71)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
11	21	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Joseph Paglino, Esq.

(Name of counsel)

PLEA

☒ to count 30
GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYFINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged
☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, knowingly and fraudulently making and causing to be made false oaths and accounts in, and in relation to bankruptcy proceedings.

(Title 18, U.S. Code, Section 152 and 2.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years on count 30.

Counts 1-29 and 31-33 are dismissed on motion of defendant's counsel and with the consent of the government.

Defendant is remanded.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends.

MICROFILM

NOV 21 1977

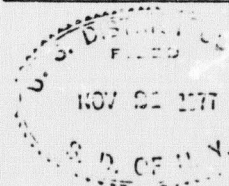
SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

ROBERT J. WARD

Date 11-21-77

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



79 N.Y.A.

Steven H. Gifis, Esq.
68 Bayberry Road
Princeton, New Jersey 08540

PROOF OF SERVICE FORM

New Jersey Appellate Printing Co., Inc.
177 Ryan Street
South Plainfield, N. J. 07080
(201) 753-2200

IN THE

United States Court of Appeals

DOCKET No. 77-1493

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

VS.

PHILIP LANDWEHR,

Defendant-Appellant

STATE OF NEW JERSEY)
) ss.
COUNTY OF MIDDLESEX)

PROOF OF SERVICE

I, RONALD D. ANZIVINO, of full age, being duly sworn according to law upon my oath, depose and say:

1. I am the President of New Jersey Appellate Printing Co., Inc., a New Jersey corporation, the principal place of business of which is located at 177 Ryan Street, South Plainfield, New Jersey

8

2. On the 9th day of February 1978, I placed in the Post Office at South Plainfield, New Jersey, a package containing

One (1) Copy Appendix

first class mail, addressed:

T. Barry Kingham, Executive Assistant, United States Attorney,
Southern District of New York, One St. Andrews Plaza,
New York, New York 10007 1 Copy

Sworn and subscribed to
before me this 9th day
of February 1978.

Ronald D. Anzivino
RONALD D. ANZIVINO

Ernest Darwin

IVY M. DARBOS
Notary Public of New Jersey
My Commission Expires May 12, 1981

